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Cooperative Principles and Statutes

Legal Descriptions
of Unique Enterprises



Abstract

Cooperative Principles and Statutes: Legal Descriptions of Unique Enterprises

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This report traces cooperative principles' development and their present status, traces incorporation statutes' development and their present status, then analyzes statutory rules to demonstrate the inseparable combination of principles and law. Clear statements of cooperative principles are found in statutes, and rules established by law reflect purpose and practices mandated by fundamental principles. Statutes are current as of mid-1985, and citations are used liberally to aid further research.

Key Words: Cooperatives, Statutes, Principles, Law, History

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Preface

Cooperative principles—descriptions of basic rules describing how cooperatives operate—are often considered of more philosophical and theoretical interest than of practical guidance. Cooperative laws, expressed in States' cooperative incorporation statutes, are often treated merely as sets of rather arbitrary rules not founded on underlying principles. Neither view of principles or statutes is complete or accurate. Cooperative principles describe a unique kind of business enterprise in the U.S. economy, and cooperative incorporation statutes extend corporation privileges and responsibilities to cooperatives, as accorded any other corporate entity. Principles are reflected as critical and pervasive differences between cooperative and noncooperative corporation law.

This report traces cooperative principles' development and their present status, traces incorporation statutes' development and their present status, then analyzes statutory rules to demonstrate the inseparable combination of principles and law. Statutory references are current as of mid-1985, and citations are used liberally to aid further research.

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Cooperative Principles and Statutes: Legal Descriptions of Unique Enterprises

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Cooperative associations owned, controlled, and used by farmers have traditionally played vital roles in America's agricultural production and distribution system. These important and unique business organizations operate according to special principles setting them apart from profit-seeking, investor-oriented corporations familiar to most people. In structure, cooperative corporations are quite similar to the ordinary business corporation—they have shareholders, directors, management, capital, debts, and buyers and sellers. But in operation they are unique, and that uniqueness is defined by “cooperative principles.”

These special “cooperative principles” were not historically imposed by a sovereign or Government. No law or decree suddenly dictated a kind of business organization to be called a “cooperative.” Rather, cooperative principles were and are operation and behavior rules developed by those who believe cooperative business enterprises are suited to individuals' own needs. They believe cooperatives can be a better way to purchase, market, obtain and supply services, and at the same time will create an environment conducive to member-users' well-being. Individuals developed principles to govern themselves, not others, to further their own economic and social goals.

Cooperative principles, originally formulated as self-governing rules, have found their way into our laws. Cooperative businesses are usually corporate bodies and, like noncooperative corporate bodies, look to States for authorization and protection. States, through incorporation laws, create corporate existence and extend benefits and restrictions to corporate entities. This is also true for cooperative corporations, but because they differ in important ways from noncooperative corporations, statutes giving cooperative associations authorization and protection differ in important ways from noncooperative business corporation laws.

Special characteristics of cooperative business enterprises have brought about differences between cooperative and noncooperative corporate law of considerable interest to attorneys representing farmer members, patrons, directors, key employees, and the cooperative entity itself. These characteristics, and the special rules by which cooperatives must abide, are also of interest and use to directors, managers, accountants, advisers, cooperative researchers, and members.

All States have recognized special characteristics of such organizations by enacting statutes specifically designed for incorporating cooperatives. These statutes, taken as a whole, supply the single most comprehensive description of the cooperative form of business enterprise. Universal existence of special cooperative incorporation acts, along with those acts' descriptions of cooperative rules, structure, and operation make State cooperative incorporation statutes a rich source of information about cooperatives.

These general observations suggest several questions about principles and law and interaction between them. First, what were the origins of cooperative principles and what is their current status? Second, what were the origins of cooperative statutes and what is their current status? Third, how do current statutes relate specifically to farmer cooperatives? Finally, and most importantly, what is the nature and extent of cooperative principle-cooperative statute interrelation?

PURPOSES OF REPORT

This report addresses these questions as listed. It first summarizes historical development of cooperative principles and gives several modern statements of principles. State cooperative incorporation statute development is then described. It identifies statutes' farmer membership focus and notes basic agricultural purposes for which they are designed. The main part of the report describes expressions of major cooperative principles found in State incorporation statutes.

Identification of statutes is based partially on the author's survey of cooperative incorporation statutes.¹ Citations are used liberally to provide ready reference to statutory sources, but are placed in footnotes to facilitate text continuity. Citations to two or more sources in a single State are listed separately if made to two or more different "Acts" or "sources" of corporate authorization.

COOPERATIVE PRINCIPLES' GROWTH

The first set of rules commonly identified as cooperative principles was a combination of true principles and desirable business practices. Developed by a consumers' cooperative of flannel weavers in England in 1844, these

¹Baarda, *State Incorporation Statutes for Farmer Cooperatives*, U.S.D.A., Agric. Coop. Serv. Coop. Info. Rept. No. 30 (1982), *hereinafter*, Baarda, *State Statutes*.

rules, though outdated in many respects, are still considered first expressions of modern cooperative principles.² This group of weavers is commonly referred to as the “Rochdale Pioneers.”

Rochdale principles were:

1. The store is open to all. 2. The store charges ordinary market prices. 3. The store receives only ready money and gives no credit. 4. The store gives dividends in proportion to purchases. 5. Every member must have a share or shares and receive good interest on them. 6. All are equal in voting power, whether they have few or many shares. 7. The store sells genuine articles that are what they profess to be. 8. The store has an honest manager and an active committee (board of directors). 9. The Society insists on an efficient and intelligent audit and stock taking.

In the United States, the Patrons of Husbandry (the Grange) developed a statement of cooperative principles in 1876 in response to widespread misunderstanding about what cooperatives were and what they could and could not do for farmers, and frequent failures of newly formed cooperatives.³ Grange principles describe the way most cooperatives in the United States now operate, although some original Grange principles, too, have been discarded by most cooperatives.⁴

The most recent statement of general cooperative principles was developed by the International Cooperative Alliance. The original statement of principles was developed in 1937 and restated in 1966.⁵ International Cooperative Alliance principles are:

1. Open membership. 2. Democratic control. 3. Distribution of a surplus to the members in proportion to their transactions. 4. Limited interest on capital. 5. Political and religious neutrality. 6. Cash trading. 7. Promotion of education.

² Scroggs, “Cooperative Principles—and How They Grew,” in *Cooperatives-Keystone of Agriculture 1980-81*, American Institute of Cooperation, Washington, D.C. (1981), pp. 153-159. For other descriptions of cooperative principles and their history see Abrahamsen, *Cooperative Business Enterprise* (1976) and references cited therein at pp. 69, 70.

³ *Ibid.*

⁴ *Ibid.* The 1876 Grange principles were: 1. One member, one vote. 2. Limitation of interest on invested capital. 3. Payment of dividends on patronage. 4. Cash trading. 5. “Neither fear nor court competition.”

⁵ *Ibid.* The first four are considered essential, the last three simply desirable.

In 1965, U.S. Department of Agriculture studied criteria commonly used to describe characteristics of a business enterprise unique to cooperatives.⁶ The criteria listed in *Cooperative Criteria* give a concise description of cooperative business enterprise operation. The criteria are:⁷

1. The basic purpose of a cooperative is to render economic benefits to its members.
2. Cooperatives are organized around the mutual interests of members.
3. Cooperatives are essentially nonprofit enterprises in the sense that they are not organized to make monetary gains for cooperatives as legal entities or for their members as investors, but primarily for all patrons as users of their services.
4. Cooperatives are democratically controlled.
5. Risks, costs, and benefits are shared equitably among members.
6. Members have an obligation to patronize their association.
7. Cooperatives do business primarily with members.

Contemporary formulations of cooperative principles vary, but do not differ fundamentally from traditional principles. Combining summary statements of principles with the descriptive formulation of the Farmer (now Agricultural) Cooperative Service gives modern farmer cooperatives four principles:

1. Cooperatives are owned and democratically controlled by those who use their services.
2. Net margins are distributed to users in proportion to their use of the cooperative.
3. Returns on investment are limited.
4. Cooperatives are financed substantially by those who use their services.

The first three principles are “traditional” and considered of prime importance by most writers as fundamental principles of a truly cooperative business enterprise. An organization operating according to the three principles will be cooperative in nature, but an organization deviating from one or more principles will not necessarily be a cooperative. The three principles are common factors in statements of principles, whether the lists are condensed to only three⁸ or expanded to several.⁹ The fourth principle is

⁶Savage and Volkin, *Cooperative Criteria*, Farmer Cooperative Service, USDA, Service Report 71 (1965), hereinafter, Savage and Volkin, *Cooperative Criteria*.

⁷*Ibid.*

⁸Nourse, “The Economic Philosophy of Cooperation,” *Am. Econ. Rev.* (1922) and Fetrow, *Three Principles of Agricultural Cooperation*, U.S.D.A., FCS Cir. E24 (1940).

⁹Bakken and Schaars, *The Economics of Cooperative Marketing* (1937), Schaars, “Basic Principles of Cooperatives—Their Growth and Development,” in *American Cooperation*, American Institute of Cooperation, Washington, D.C. (1951), pp. 835-852, Bakken, *Basic Concepts, Principles, and Practices of Cooperation* (1963), and Packel, *The Organization and Operation of Cooperatives*. (4th Ed.) (1970), pp. 4,5.

a restatement of the ownership feature of the first principle. It is stated separately because of current interest in member-financing techniques, particularly the equity redemption process unique to cooperative enterprises financed on an as-needed basis by owner-users.¹⁰

A summary definition of a cooperative enterprise incorporates all essential principles. As defined in *Cooperative Criteria*:¹¹

“A cooperative is a voluntary contractual organization of persons having a mutual ownership interest in providing themselves needed service(s) on a nonprofit basis. It is usually organized as a legal entity to accomplish an economic objective through joint participation of its members. In a cooperative the investment and operational risks, benefits gained, or losses incurred are shared equitably by its members in proportion to their use of the cooperative’s services. A cooperative is democratically controlled by its members on the basis of their status as member-users and not as investors in the capital structure of the cooperative.”

The four summary principles, seven criteria identified by Farmer (now Agricultural) Cooperative Service, and summary cooperative definition supply guidelines for a search of State cooperative incorporation statutes for expressions of law reflecting cooperative enterprise principles.

COOPERATIVE STATUTES’ GROWTH

Though a detailed history of cooperative statutory development is not possible or necessary for an analysis of cooperative principles, it is important to recognize our contemporary statutory framework for cooperative existence and operation grew during periods of ferment in cooperative philosophy and thought, and developed from practical needs of those wishing to make cooperatives a vital force in American agriculture. This section outlines State cooperative incorporation statute development and describes statutes’ purposes and individuals for whom they were designed.

Historical development of cooperative incorporation statutes left its mark upon patterns of present statutes. Cooperative formation and growth,

¹⁰Examples are: General Accounting Office, *Family Farmers Need Cooperatives--But Some Issues Need to be Resolved* (July 26, 1979), Cobia, et al., *Equity Redemption: Issues and Alternatives for Farmer Cooperatives*. U.S.D.A., Ag. Coop. Serv. Res. Rept. No. 23 (Oct. 1982), and Hamilton, “Cooperative Member Relations and Members’ Rights in Retained Equity--Setoffs and Other Approaches,” 6 *J. Ag. Taxation & Law*, 603 (1984).

¹¹Savage and Volkin, *Cooperative Criteria*.

especially in the late teens and early 1920's, created demand for incorporation authority equal to that available to noncooperative corporations, but which formally recognized peculiar characteristics of cooperative enterprise.

The first incorporation statute generally recognized as specifically designed for a cooperative form of business enterprise was enacted in Michigan in 1865.¹² The most influential statute of general application was Wisconsin's 1911 Act permitting persons to "associate themselves as a cooperative association, society, company, or exchange, for the purpose of conducting any agricultural, dairy, mercantile, mining, manufacturing or mechanical business on the cooperative plan."¹³ A similar law was adopted by 16 States.¹⁴

In the same year Nebraska enacted a similar law, followed within a few years in four States.¹⁵ Vestiges of the Wisconsin Act remain in a significant number of contemporary statutes.

Several nonstock incorporation statutes were adopted during the same period. The California Act of 1909 was such a nonstock act, and was followed in four other States.¹⁶ A second nonstock law was suggested in 1917 by the U. S. Department of Agriculture.¹⁷ It was used as a model in six States.¹⁸

¹²Act of March 20, 1865, No. 288, 1865 Mich. Pub. Acts 6. Some early statutes are discussed in Nourse, *The Legal Status of Farmer Cooperation* (1927) and Hanna, *Law of Cooperative Marketing Associations* (1931).

¹³1911, ch. 368. 1911 Wisc. Laws. Except for direct quotes, citations to original acts will not be given.

¹⁴Nourse, *The Legal Status of Farmer Cooperation*, 46, n. 23 (1927). Hanna, *Law of Cooperative Marketing Associations* (1931) lists only 13. The 16 listed by Nourse were: Michigan, Minnesota, South Dakota, New York, Kansas, Washington, and Massachusetts, all in 1913; Virginia in 1914; Iowa, Wyoming, North Carolina, South Carolina, and Oregon in 1915; Rhode Island in 1916; Kentucky in 1918; and Oklahoma in 1919.

¹⁵Colorado and Indiana in 1913, North Dakota in 1915, and Florida in 1917. Nourse, *Legal Status*, p. 48.

¹⁶Florida in 1909, Colorado and New Mexico in 1915, and Nevada in 1921.

¹⁷The bill was promoted to meet the requirements of Section 6 of the Clayton Act of 1914 (15 U.S.C. § 6 (1982)) for "labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit...." Antitrust protection was extended to stock associations by the Capper-Volstead Act of 1922, Ch. 57, 42 Stat. 388 (codified at 7 U.S.C. §§ 291, 292).

¹⁸New York and Louisiana in 1918, Pennsylvania in 1919, New Jersey and Ohio in 1920, and Iowa in 1921. Hanna lists in addition Oklahoma (1917) and West Virginia (1921). Hanna, *The Law of Cooperative Marketing Associations* (1931), at p. 42, nn. 26-32.

Nonstock statutes' influence, as well as the relative importance of all other statutes existing in 1920, was overwhelmed by rapid and almost universal adoption of a law drafted by Aaron Sapiro of California.¹⁹ Sapiro was a dynamic promoter of cooperative marketing efforts. The lasting impact of his law was due to its appropriateness to the times,²⁰ the need for cooperative incorporation legislation,²¹ and vigorous personal efforts by Sapiro himself²².

With many cooperatives' failure to fulfill hopes held out by Sapiro and his followers, and with changing concepts about what the "cooperative movement" should do, Sapiro's personal influence among cooperatives waned. The laws, however, proved resilient.

So great was the stature of the law Sapiro designed,²³ it was quickly labeled the "Standard Act."²⁴ The statute usually identified as an example of the Standard Act was the Bingham Act in Kentucky,²⁵ partly because it incorporated improvements over previous examples of the Standard Act and was the subject of constitutional challenge, the results of which gave an imprimatur of legitimacy to cooperative associations throughout the United States.²⁶

¹⁹This does not mean, however, that other statutes and ideas were simply replaced. Most still exist, usually alongside a Sapiro type statute, and many are actively used by cooperatives today.

²⁰As an example, many associations were organized to coordinate marketing for a large proportion of a commodity in hopes bargaining power would enhance prices to farmers. A strong marketing agreement between farmer and cooperative was needed to get product commitment for the commodity. Sapiro insisted on strong contract terms in the law, though their "iron clad" characteristics proved weak given economic circumstances and were, in fact, in some ways incompatible with concepts of voluntary cooperatives in the U. S.

²¹Though incorporation authority was badly needed and provided by Sapiro type laws, almost equal importance was given at the time to legitimizing cooperatives under antitrust and anticompetition laws.

²²For comments on Sapiro and his activities see Nourse, *Legal Status* and Knapp, *The Advance of American Cooperative Enterprise: 1920-1945* (1973).

²³Of course, Sapiro did not ignore all existing statutes and write a totally unique law on a clean slate. Most features can be traced to existing laws in some fashion.

²⁴Both Nourse (Nourse, *Legal Status*) and Hanna (Hanna, *The Law of Cooperative Marketing Associations* (1931)) used "Standard Act" to describe the Sapiro formulation. See also Evans and Stokdyk, *The Law of Agricultural Co-operative Marketing* (1937).

²⁵Adopted in 1922.

²⁶*Liberty Warehouse Co. v. Burley Tobacco Growers' Co-operative Marketing Ass'n*, 276 U.S. 71 (1928).

The Standard Act was adopted rapidly. In 1921, 13 States adopted the Standard Act as the model for their own cooperative incorporation statute.²⁷ Five States adopted it in 1922,²⁸ fourteen in 1923,²⁹ two in 1929,³⁰ three in 1925,³¹ and one each in 1927 and 1928.³² If variations are included in the Standard Act count of States, a total of 46 had adopted some form of the Standard Act by 1930.³³

Despite widespread adoption of similar versions of the Standard Act, a number of scholars encouraged adoption of a truly uniform act in the mid-1930's. In 1936, a draft of a uniform law was approved by the National Conference of Commissioners on Uniform Laws³⁴ and was approved by the American Bar Association.³⁵ Though the Uniform Agricultural Cooperative Association Act was touted as an "epochal development"³⁶ in cooperative marketing law, it was ultimately adopted in only three States³⁷ and was withdrawn in 1943 for lack of significant acceptance.³⁸

The most recent group of related incorporation statutes for cooperatives was initiated by Wisconsin in 1955. The Wisconsin law was followed rather closely by several other States³⁹ and has influenced other statutes.⁴⁰ Several

²⁷Alabama, Arizona, Arkansas, Georgia, Idaho, Kansas, Montana, North Carolina, North Dakota, Oregon, South Carolina, Texas, and Washington.

²⁸Kentucky, Louisiana, Maryland, Mississippi, and Virginia.

²⁹California, Colorado, Florida, Illinois, Maine, Minnesota, Mississippi, Ohio, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming.

³⁰New Jersey and New York.

³¹Indiana, Nebraska, and New Hampshire.

³²New Mexico and Rhode Island, respectively.

³³For example, variations not counted by Hanna were Pennsylvania, Iowa, Michigan, Nebraska, Wisconsin, Connecticut, and Massachusetts. Hanna, *The Law of Cooperative Marketing Associations* (1931), p. 46, n. 35.

³⁴Proceedings of the National Conference on Uniform State Laws 180 (1936), cited in Rumble, "Some Suggested Amendments to the Wisconsin Cooperative Law," 1954 *Wisc. L. Rev.* 589, 599 n. 12. See also Evans and Stokdyk, *The Law of Agricultural Co-operative Marketing* (1937), at p. 19, n. 2.

³⁵61 *A.B.A. Rept.* 164 (1936) cited in *Ibid.*, at 599, n. 13.

³⁶Evans and Stokdyk, *The Law of Agricultural Co-operative Marketing* (1937), p. 300.

³⁷Utah in 1939, Maine in 1945, and Hawaii in 1949.

³⁸Rumble, "Some Suggested Amendments to the Wisconsin Cooperative Law," 1954 *Wisc. L. Rev.* 589, 599. Provisions of the Uniform Agricultural Cooperative Association Act are set out in Evans and Stokdyk, *The Law of Agricultural Cooperative Marketing* (1937) at pp. 301-337, along with comments on many of its provisions.

³⁹North Dakota, Oregon, and South Dakota.

⁴⁰Alaska and Hawaii.

other patterns of development are evident from statutory research, patterns whose thorough description must await further statutory and historical research. Valid comparisons of statutes by aggregation of specific provisions characteristics will require application of statistical analytic techniques.⁴¹

AGRICULTURAL CLASSIFICATION

The cooperative incorporation statutes may be classified in a number of ways depending on characteristics chosen as criteria. Perhaps the most important general classification for farmer cooperatives is the agricultural-nonagricultural cooperative distinction. Cooperative incorporation statutes designed specifically for and limited to agricultural cooperatives possess several characteristics and restrictions distinct from cooperative incorporation statutes designed for use by nonagricultural as well as agricultural cooperatives.

Statutes may restrict their application to agricultural cooperatives in two ways. The statutes' purposes may be stated to include only farm related activities, or the cooperative's membership may be restricted to farmers. Most agricultural cooperative incorporation statutes contain both restrictions.

Association Purposes

The most common statement of agricultural related cooperative purposes is found in the Standard Act.⁴² It reads: "An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, trading, storing, handling, shipping or utilization thereof, or the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein."⁴³

⁴¹Of course, for the practicing attorney in search of language in other jurisdictions identical or similar to the local jurisdiction, analysis of statutes will require more than identification of patterns across jurisdictions. It may require nothing less than a search for identical language among statutes on a specific topic.

⁴²See above for explanation of Standard Act. Other purpose provisions in cooperative incorporation statutes are identified and summarized in Baarda, *State Statutes*, §§ 5.01 and 5.02.

⁴³The Bingham Co-operative Marketing Act, ch. 1, 34, 1922 Ky. Acts, *herein after* The Standard Act.

Cooperative purposes may be classified as related to production, processing, handling byproducts, marketing, supply, financing, and multiple activities.

Production. Twenty-five cooperative incorporation statutes list as a permissible cooperative purpose activities carried out in connection with production of members' agricultural products, though "production" is not further defined. Production by the cooperative itself is not necessarily implied, only those activities associated with members' farm production.⁴⁴

Processing. After a commodity has been produced by farmers, it may be delivered to a cooperative. The cooperative will perform a number of services for the member, such as processing raw agricultural commodities. Cooperative processing has long been recognized as an important function of farmer associations. Forty-three statutes in 38 States explicitly mention processing as a purpose for which farmers may form cooperatives.⁴⁵ The most common itemization of activities included in processing is the Standard Act list, noted above. Thirty-five statutes follow the Standard Act's "core" list, adding or deleting specific terms.

⁴⁴ *Alabama:* Ala. Code § 2-10-91 (1975); *Arkansas:* Ark. Stat. Ann. § 77-1004 (1981); *California:* Cal. Food & Agric. Code § 54061(a) (West 1968); *Connecticut:* Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Florida:* Fla. Stat. Ann. § 618.06 (West 1977); *Hawaii:* Hawaii Rev. Stat. § 421-2(1) (1976); *Idaho:* Idaho Code § 22-2604 (1977); *Illinois:* Ill. Ann. Stat. ch. 32, § 443 (Smith-Hurd 1954); *Indiana:* Ind. Code Ann. § 15-7-1-4 (Burns 1983); *Iowa:* Iowa Code Ann. § 499.6 (West 1949); *Kentucky:* Ky. Rev. Stat. § 272.111 (1981); *Louisiana:* La. Rev. Stat. Ann. § 74(a) (West 1973); *Maine:* Me. Rev. Stat. Ann. tit. 13, § 1822(1) (1981); *Maryland:* Md. Corps. & Ass'ns Code Ann. § 5-502(1) (1975); *Montana:* Mont. Code Ann. § 35-16-201 (1983); *Nebraska:* Neb. Rev. Stat. § 21-1402 (1983); *New Jersey:* N.J. Stat. Ann. § 4:13-3 (West 1973); *New York:* N.Y. Coop. Corp. Law § 13 (McKinney 1951); *North Carolina:* N.C. Gen. Stat. § 54-132 (1982); *Pennsylvania:* Pa. Stat. Ann. tit. 15, § 12109(1) (Purdon Supp. 1984-1985); *Rhode Island:* R.I. Gen. Laws § 7-7-2 (1969); *South Carolina:* S.C. Code Ann. § 33-47-80(1) (Law. Co-op. 1976); *Texas:* Tex. Agric. Code Ann. § 52.011(a) (2) (Vernon 1982); *Utah:* Utah Code Ann. § 3-1-4(a) (1982); and *Virginia:* Va. Code § 13.1-315(a) (1978).

⁴⁵ *Alabama:* Ala. Code § 2-10-53 (1975) and Ala. Code § 2-10-91 (1975); *Arkansas:* Ark. Stat. Ann. § 77-904 (1981) and Ark. Stat. Ann. § 77-1004 (1981); *California:* Cal. Food & Agric. Code § 54061(b) (West 1968); *Colorado:* Colo. Rev. Stat. § 7-56-105 (1973); *Connecticut:* Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Florida:* Fla. Stat. Ann. § 618.06 (West 1977); *Georgia:* Ga. Code § 2-10-94 (1982); *Hawaii:* Hawaii Rev. Stat. § 421-2(1) (1976); *Idaho:* Idaho Code § 22-2604 (1977); *Illinois:* Ill. Ann. Stat. ch. 32, § 443 (Smith-Hurd 1954); *Indiana:* Ind. Code Ann. § 15-7-1-4 (Burns 1983); *Iowa:* Iowa Code Ann. § 499.6 (West 1949); *Kansas:* Kan. Stat. Ann. § 17-1604 (1981); *Kentucky:* Ky. Rev. Stat. § 272.111 (1981); *Louisiana:* La. Rev. Stat. Ann. § 74(1) (West 1973) and La. Rev. Stat. Ann. § 124 (West 1973); *Maine:* Me. Rev. Stat. Ann. tit. 13, § 1822(1) (1981); *Maryland:* Md. Corps. & Ass'ns Code Ann. § 5-502(1) (1975); *Minnesota:* Minn. Stat. Ann. § 308.55 (West 1969); *Mississippi:* Miss. Code

With the Standard Act as a guide, 15 statutes do not refer specifically to grading, the most common deviation from Standard Act terminology. Ginning and warehousing are added by 11 statutes each, blending and manufacturing are added by 8 statutes each, and assembling is added by 5. Other processing-like provisions are found in only one or two statutes—including transportation, hauling, dairying, threshing, cleansing, and growing.⁴⁶

Agricultural cooperative statutes do not restrict the range of processing and manufacturing undertaken with respect to members' product. When a cooperative undertakes a processing function, it may use necessary practices required to make the enterprise efficient. An example of such activities is the reference to byproducts utilization found in 35 States (38 statutes).⁴⁷ The typical reference is to "any activity in connection with" manufacturing, marketing, or utilizing byproducts.

Ann. § 79-19-7 (1972); *Missouri*: Mo. Ann. Stat. § 274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-16-201 (1983) and Mont. Code Ann. § 35-17-105 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1402 (1983); *New Jersey*: N.J. Stat. Ann. § 4:13-3 (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-5 (1978); *New York*: N.Y. Coop. Corp. Law § 13 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-132 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.02 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) and Okla. Stat. Ann. tit. 2, § 361d (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12109(1) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-2 (1969); *South Carolina*: S.C. Code Ann. § 33-47-80(2) (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-105 (1980); *Texas*: Tex. Agric. Code Ann. § 52.011(a)(2) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-4(a) (1982); *Virginia*: Va. Code § 13.1-315(a) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.030 (1969); *West Virginia*: W. Va. Code § 19-4-3 (1984); and *Wyoming*: Wyo. Stat. § 17-10-104 (1977).

⁴⁶ Additions and deletions are identified in Baarda, *State Statutes*, § 5.01.02. Other statutes itemize activities related to processing or manufacturing for which a cooperative may be incorporated, not necessarily limited to agricultural commodity processing.

⁴⁷ *Arizona*: Ariz. Rev. Stat. Ann. § 10-705(1) (1977); *Arkansas*: Ark. Stat. Ann. § 77-904 (1981) and Ark. Stat. Ann. § 77-1004 (1981); *California*: Cal. Food & Agric. Code § 54061(b) (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-105 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Florida*: Fla. Stat. Ann. § 618.06 (West 1977); *Georgia*: Ga. Code § 2-10-94 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-2(1) (1976); *Idaho*: Idaho Code § 22-2606(a) (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 443 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-4 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.6 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1604 (1981); *Kentucky*: Ky. Rev. Stat. § 272.211(1) (1981); *Louisiana*: La. Rev. Stat. Ann. § 74(1) (West 1973) and La. Rev. Stat. Ann. § 124 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1822(1) (1981); *Minnesota*: Minn. Stat. Ann. § 308.55 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-7 (1972); *Missouri*: Mo. Ann. Stat. § 274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-105 (1983); *New Jersey*: N.J. Stat. Ann. § 4:13-3(a) (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-5 (1978); *New York*: N.Y.

Marketing. Most farmer cooperatives are organized primarily to market commodities produced by members. Cooperatives may bargain on behalf of members without taking title to the product, purchase and resell, or market a product derived from processing the agricultural products. Marketing and selling, without distinguishing between the two, are objects of most cooperative incorporation statutes for farmers. Forty-three statutes in 37 States list marketing and selling as a cooperative purpose,⁴⁸ almost all following Standard Act terminology noted previously.⁴⁹

Supply. A fourth purpose found in farmer cooperative statutes recognizes supply functions. Most incorporation statutes, particularly those growing from the Standard Act, are called “marketing cooperative” statutes in their

Coop. Corp. Law § 13 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-132 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.02 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) and Okla. Stat. Ann. tit. 2, § 361d (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12109(1) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-47-80(3) (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-105 (1980); *Texas*: Tex. Agric. Code Ann. § 52.011(a)(3) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-4(a) (1982); *Virginia*: Va. Code § 13.1-315(a) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.030 (1969); *West Virginia*: W. Va. Code § 19-4-3 (1984); and *Wyoming*: Wyo. Stat. § 17-10-104, 109(7) (1977).

⁴⁸*Alabama*: Ala. Code § 2-10-53 (1975) and Ala. Code § 2-10-91 (1975); *Arkansas*: Ark. Stat. Ann. § 77-904 (1981) and Ark. Stat. Ann. § 77-1004 (1981); *Cal. Food & Agric. Code* § 54061(a) (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-105 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Florida*: Fla. Stat. Ann. § 618.06 (West 1977); *Georgia*: Ga. Code § 2-10-94 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-2(1) (1976); *Idaho*: Idaho Code § 22-2604 (1977); *Illinois*: Ill. Ann. Stat. ch. 32 § 443 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-4 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.6 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1604 (1981); *Kentucky*: Ky. Rev. Stat. § 272.111 (1981); *Louisiana*: La. Rev. Stat. Ann. § 74(1) (West 1973) and La. Rev. Stat. Ann. § 124 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1822(1) (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-502(1) (1975); *Minnesota*: Minn. Stat. Ann. § 308.55 (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-25 (1972) and Miss. Code Ann. § 79-19-7 (1972); *Missouri*: Mo. Ann. Stat. § 274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-16-201 (1983) and Mont. Code Ann. § 35-17-105 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1402 (1983); *New Jersey*: N.J. Stat. Ann. § 4:13-3 (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-5 (1978); *New York*: N.Y. Coop. Corp. Law § 13 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-132 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.02 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) and Okla. Stat. Ann. tit. 2, § 361d (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12109(1) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-2 (1969); *South Carolina*: S.C. Code Ann. § 33-47-80(1) (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-105 (1980); *Texas*: Tex. Agric. Code Ann. § 52.011(a)(4) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-4(a) (1982); *Virginia*: Va. Code § 13.1-315(a) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.030 (1969); *West Virginia*: W. Va. Code § 19-4-3 (1984); and *Wyoming*: Wyo. Stat. § 17-10-104 (1977).

⁴⁹Variations are identified for each statute in Baarda, *State Statutes*, § 5.01.04.

titles, but include supply among listed purposes. Associations organized to “engage in any activity in connection with ... the manufacturing, selling or supplying to its members of machinery, equipment or supplies” are mentioned in 30 statutes representing 28 States,⁵⁰ while another 13 use different terminology to describe supply functions.⁵¹

It is clear from this brief survey of purposes and powers provisions the bulk of cooperative incorporation statutes are agricultural in orientation. The complete range of services farmers wish to provide themselves by formal cooperation is reflected in statutes they use for incorporation. Farmers’ motivation to cooperate and their desire (and need) to use corporate business organizations have found their way into laws in every State.

Four purposes have been described as characteristic of incorporation statutes designed for farmer cooperatives (production, processing, marketing, and supply). Many statutes contain other purpose terms not

⁵⁰ *Alabama*: Ala. Code § 2-10-53 (1975) and Ala. Code § 2-10-91 (1975); *Arkansas*: Ark. Stat. Ann. § 77-904 (1981); *California*: Cal. Food & Agric. Code § 54061 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-105 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Florida*: Fla. Stat. Ann. § 618.06 (West 1977); *Georgia*: Ga. Code §12-10-94 (1982); *Idaho*: Idaho Code §122-2604 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 443 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-4 (Burns 1983); *Iowa*: Iowa Code Ann. §.499.6 (West 1949); *Kansas*: Kan. Stat. Ann. §.17-1604 (1981); *Kentucky*: Ky. Rev. Stat. §.272.111 (1981); *Louisiana*: La. Rev. Stat. Ann. S... 24 (West 1973); *Minnesota*: Minn. Stat. Ann. § 308.55 (West 1969); *Mississippi*: Miss. Code Ann. §179-19-7 (1972); *Missouri*: Mo. Ann. Stat. §.274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-105 (1983); *New Mexico*: N.M. Stat. Ann. § 76-12-5 (1978); *North Carolina*: N.C. Gen. Stat. § 54-132 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.02 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, §.361d (West 1973); *South Carolina*: S.C. Code Ann. § 33-47-80(4) (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-105 (1980); *Texas*: Tex. Agric. Code Ann. § 52.011(a)(4) (Vernon 1982); *Washington*: Wash. Rev. Code Ann. § 24.32.030 (1969); *West Virginia*: W. Va. Code § 19-4-3 (1984); and *Wyoming*: Wyo. Stat. § 17-10-104 (1977).

⁵¹ Variations in Standard Act language and provisions quite different from it are noted in Baárda, *State Statutes*, § 5.01.05. Statutes differing from it are: *Arkansas*: Ark. Stat. Ann. § 77-1004 (1981); *Hawaii*: Hawaii Rev. Stat. § 421-2(2) (1976); *Louisiana*: La. Rev. Stat. Ann. § 74(1) (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1822(2) (1981); *Maryland*: Md. Corps. & Ass’ns Code Ann. § 5-502(3) (1975); *Nebraska*: Neb. Rev. Stat. § 21-1402 (1983); *New Jersey*: N.J. Stat. Ann. § 4:13-3 (West 1973); *New York*: N.Y. Coop. Corp. Law § 13 (McKinney 1951); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12109(2), (3) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-2 (1969); *Utah*: Utah Code Ann. § 3-1-4(b), (c), (3) (1982); and *Virginia*: Va. Code § 13.1-315(b) (1978).

noted here of importance under many circumstances. In addition to purposes, information about incorporation statutes' application is contained in powers granted to cooperatives organized thereunder. Read together, purposes and powers sections describe basic characteristics and application for each incorporation statute.

Farmer Membership

Membership limitation is a second characteristic of incorporation statutes for cooperatives identifying a statute group as especially designed for farmer cooperatives. Statutes restricted in purpose to agricultural cooperatives limit membership to producers of agricultural products. Specific limitations in each State must be considered at initial stages of association organization and throughout its existence when membership admission and transfer decisions are made. As a practical matter, membership restrictions are usually placed in bylaws. A typical example is: "Any person, firm, partnership, corporation, or association, including both landlords and tenants in share tenancy, who is a producer of agricultural products ... may become a member of the association."⁵² Most farmer cooperative statutes specifically note bylaws as a source of member definition.⁵³

Restriction on incorporators is exemplified by the Standard Act statement a cooperative may be organized by persons "engaged in the production of agricultural products."⁵⁴ Forty-nine statutes (representing 40 States) contain a similar or identical restriction.⁵⁵

⁵²*Legal Phases of Farmer Cooperatives*, U.S.D.A., Farmer Coop. Serv. Info. 100 (1976), p. 567.

⁵³Baarda, *State Statutes*, § 10.03.01.

⁵⁴The Standard Act, ch. 1, §13.

⁵⁵*Alabama*: Ala. Code § 2-10-52 (1975) and Ala. Code § 2-10-92 (1975); *Arizona*: Ariz. Rev. Stat. Ann. 10-703(A) (1977); *Arkansas*: Ark. Stat. Ann. § 77-903 (1981) and Ark. Stat. Ann. § 77-1003 (1981); *California*: Cal. Food & Agric. Code § 54061 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-104 (1973) and Colo. Rev. Stat. § 7-57-101 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-195 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8502(a) (1974); *Florida*: Fla. Stat. Ann. § 618.02 (West 1977) and Fla. Stat. Ann. § 619.01 (West 1977); *Georgia*: Ga. Code § 2-10-83 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-3 (1976); *Idaho*: Idaho Code § 22-2603 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 422 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-3 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.5 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1603(a) (1981); *Kentucky*: Ky. Rev. Stat. § 272.121 (1981); *Louisiana*: La. Rev. Stat. Ann. § 73 (West 1973) and La. Rev. Stat. Ann. § 123 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1821 (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-503 (1975); *Minnesota*: Minn. Stat. Ann. § 308.54 (West 1969); *Mississippi*: Miss. Code

The Ohio statute requires a majority of members be engaged in producing agricultural products,⁵⁶ one of three Montana statutes requires title to land,⁵⁷ and one Texas statute refers to those engaged in “agricultural pursuits.”⁵⁸

A majority of incorporation statutes for cooperatives describe membership qualifications,⁵⁹ both by defining what a member is and what the organizational form may be.⁶⁰ The requirement that a member be a producer of agricultural products sets a group of cooperative incorporation statutes apart for use by “farmer cooperatives.”

A great majority of statutes restrict membership to farmers, saying “an association may admit as members, or issue common stock to, persons only engaged in the production of agricultural products to be handled by or through the association, including lessors and tenants of land used for the production of such products and any lessors and landlords, who receive as rent all or part of the crop raised on the leased premises.”⁶¹ Forty-eight statutes in 42 States limit membership to agricultural producers.⁶²

Ann. § 79-17-13 (1972) and Miss. Code Ann. § 79-19-5 (1972); *Missouri*: Mo. Ann. Stat. § 274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-16-201 (1983) and Mont. Code Ann. § 35-17-104 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1402 (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:2 (1977); *New Mexico*: N.M. Stat. Ann. § 76-12-4 (1978); *New York*: N.Y. Coop. Corp. Law § 112 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-131 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.05 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) and Okla. Stat. Ann. tit. 2, § 361c (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12108 (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-2 (1969); *South Carolina*: S.C. Code Ann. § 33-47-70 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-104 (1980); *Texas*: Tex. Agric. Code Ann. § 51.008 (Vernon 1982) and Tex. Agric. Code Ann. § 52.031 (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-3 (1982); *Virginia*: Va. Code § 13.1-314 (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.020 (1969); *West Virginia*: W. Va. Code § 19-4-2 (1984); and *Wyoming*: Wyo. Stat. § 17-10-103 (1977).

⁵⁶Ohio Rev. Code Ann. § 1729.05 (Page 1978).

⁵⁷Mont. Code Ann. § 35-16-201 (1983).

⁵⁸Tex. Agric. Code Ann. § 52.008 (Vernon 1982).

⁵⁹See Baarda, *State Statutes*, § 10.01.

⁶⁰Usually individuals, firms, partnerships, corporations, and associations. See Baarda, *State Statutes*, § 10.03.03.

⁶¹The Standard Act, § 7(a).

⁶²*Alabama*: Ala. Code § 2-10-35 (1975) and Ala. Code § 2-10-90 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-708 (1977); *Arkansas*: Ark. Stat. Ann. § 77-907(a) (1981) and Ark. Stat. Ann. § 77-1007 (1981); *California*: Cal. Food & Agric. Code § 54231 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-108(1) (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-205 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8501(4) (1974); *Florida*: Fla. Stat. Ann. § 618.10 (West 1977); *Georgia*: Ga. Code § 2-10-90 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-10(a) (1976); *Idaho*: Idaho Code § 22-2607(a) (1977);

Restrictions on membership and common stock transfer to nonproducers is part of the producer-only structure of many cooperative incorporation statutes. Statutes may make such restrictions an articles of incorporation requirement,⁶³ and bylaws are also noted by statutes as a source of transfer restrictions.⁶⁴ Statutory restrictions may apply to either membership in nonstock associations or to common stock of associations without capital stock. Transfer restrictions are usually limited in scope, with transfer prohibited only to nonproducers. However, a number of statutes prohibit any transfer of membership in nonstock associations without regard to transferee qualifications. Twenty-three statutes (19 States) refer to restricted transferability for membership in nonstock associations⁶⁵ and 49

Illinois: Ill. Ann. Stat. ch. 32, §§ 441(e), 446 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-6 (Burns 1983); *Iowa*: Iowa Code Ann. §§ 499.13, 499.14 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1606(a) (1981); *Kentucky*: Ky. Rev. Stat. § 272.191(1) (1981); *Louisiana*: La. Rev. Stat. Ann. § 75 (West 1973) and La. Rev. Stat. Ann. § 126 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1911(1) (1981); *Massachusetts*: Mass. Ann. Laws ch. 157, § 14 (Michie/Law. Co-op. 1979); *Minnesota*: Minn. Stat. Ann. § 305.57 (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-23 (1972) and Miss. Code Ann. § 79-19-11(1) (1972); *Missouri*: Mo. Ann. Stat. § 274.040(1) (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-301 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1406 (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:7 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-21 (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-11 (1978); *New York*: N.Y. Coop. Corp. Law § 111 (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. § 54-111 (1982) and N.C. Gen. Stat. § 54-145(a) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.09(A) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 337(a) (West 1973) and Okla. Stat. Ann. tit. 2, § 361j(a) (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12113 (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-8 (1969); *South Carolina*: S.C. Code Ann. § 33-47-410 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-109 (1980); *Texas*: Tex. Agric. Code Ann. § 52.064(c) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-10(a) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 998 (1984); *Virginia*: Va. Code § 13.1-321(a) (1978); *Washington*: Wash. Rev. Code Ann. 24.32.060(1) (1969); *West Virginia*: W. Va. Code § 19-4-5 (1984); and *Wyoming*: Wyo. Stat. § 17-10-110(6) (1977).

⁶³See Baarda, *State Statutes*, § 10.08.01.

⁶⁴*Ibid.*, § 9.06.

⁶⁵*Alabama*: Ala. Code § 2-10-97 (1975); *Alaska*: Alaska Stat. § 10.15.350(4) (1968); *Arkansas*: Ark. Stat. Ann. § 77-1007(a) (1981); *Colorado*: Colo. Rev. Stat. § 7-55-101(d) (1973); *Florida*: Fla. Stat. Ann. § 619.03 (West 1977); *Iowa*: Iowa Code Ann. § 498.12 (West 1949) and Iowa Code Ann. § 499.17 (West 1949); *Kentucky*: Ky. Rev. Stat. § 272.201(1) (1981); *Louisiana*: La. Rev. Stat. Ann. § 126 (West 1973); *Mississippi*: Miss. Code Ann. § 79-17-21 (1972) and Miss. Code Ann. § 79-19-11(1) (1972); *Nebraska*: Neb. Rev. Stat. § 21-1406 (1983); *Nevada*: Nev. Rev. Stat. §§ 81.030(2), (3), (4) (1983), Nev. Rev. Stat. §§ 81.180(2), 81.270 (1979), and Nev. Rev. Stat. § 81.431(2) (1979); *New Jersey*: N.J. Stat. Ann. § 4:13-23 (West 1973); *New York*: N.Y. Coop. Corp. Law § 40 (McKinney 1951); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361k(c) (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12116(a) (Purdon Supp. 1984 - 1985); *Rhode Island*: R.I. Gen. Laws § 7-7-9 (1969); *Texas*: Tex. Agric. Code Ann. § 51.014(a) (Vernon 1982); and *Virginia*: Va. Code § 13.1-322(b) (1978).

statutes in 40 States mention restrictions on transfer of stock evidencing membership in an association formed with capital stock.⁶⁶

Membership restrictions, pervasive throughout the cooperative statutes, are unequivocal evidence of farmer orientation in the "design" of statutory authorization for cooperation among producers. Farmers felt the need most keenly. Conditions in agriculture during statutory formation period described in historical context caused farmers to become a major force in incorporating their needs and ideas into law. The law, now as then, clearly reflects ideas and ideals of farmer cooperation.

COOPERATIVE PRINCIPLES, CRITERIA, AND THE STATUTES

Cooperative organizations whose purpose and membership limit them to agricultural marketing, supply, or service functions are, of course, unique. Statutes setting them apart from other cooperatives are of interest for that reason. However, a more fundamental inquiry may be made into what sets

⁶⁶ *Alabama*: Ala. Code § 2-10-62 (1975) and Ala. Code § 2-10-98 (1975); *Alaska*: Alaska Stat. § 10.15.050 (1968); *Arkansas*: Ark. Stat. Ann. § 77-914 (1981) and Ark. Stat. Ann. § 77-1007(a) (1981); *California*: Cal. Food & Agric. Code § 54237 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-55-107(e) (1973) and Colo. Rev. Stat. § 7-56-116(6) (1973); *Delaware*: Del. Code Ann. tit. 3, § 8531 (1974); *Florida*: Fla. Stat. Ann. § 618.15 (West 1977); *Georgia*: Ga. Code § 2-10-91 (1982); *Idaho*: Idaho Code § 22-2614 (1977); *Illinois*: Ill. Ann. Stat. ch. 32 § 327 (Smith-Hurd 1954) and Ill. Ann. Stat. ch. 32 § 454.6 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-13(e) (Burns 1983); *Iowa*: Iowa Code Ann. § 499.17 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1613 (1981); *Kentucky*: Ky. Rev. Stat. § 272.201(8) (1981); *Louisiana*: La. Rev. Stat. Ann. § 82 (West 1973) and La. Rev. Stat. Ann. § 133 (West 1973); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-508(a)(1) (1975); *Michigan*: Mich. Comp. Laws § 450.102 (Mich. Stat. Ann. § 21-103 (Callaghan 1983)); *Minnesota*: Minn. Stat. Ann. §§ 308.06(2)(5), 308.07(9) (West 1969) and Minn. Stat. Ann. § 308.65 (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-23 (1972) and Miss. Code Ann. § 79-17-25 (1972); *Montana*: Mont. Code Ann. § 35-15-403 (1983) and Mont. Code Ann. § 35-17-302(4) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1303(1) (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:30 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-23 (West 1973); *New Mexico*: N.M. Stat. Ann. §§ 76-12-11(b), 12(c) (1978); *New York*: N.Y. Coop. Corp. Law § 14(h) (McKinney 1951); *North Carolina*: N.C. Gen. Stat. §§ 54-116(9), 120 (1982) and N.C. Gen. Stat. § 54-14(g) (1982); *North Dakota*: N.D. Cent. Code § 10-15-20(2) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.10(1) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361k(c) (West 1973); *Oregon*: Or. Rev. Stat. § 62.175(2) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12115(a) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-12 (1969); *South Carolina*: S.C. Code Ann. § 33-47-650 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-22 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-129 (1980); *Texas*: Tex. Agric. Code Ann. § 52.064(c) (Vernon 1982); *Virginia*: Va. Code § 13.1-322(c) (1978); *West Virginia*: W. Va. Code § 19-4-13 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.21(2)(a), (b) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-110(6) (1977).

cooperative enterprises apart from noncooperative business entities. This distinction crosses any boundary between statutes encompassing only farmer cooperatives and those applying to nonfarm cooperatives as well.

Principles' and criteria's role in statutory description of cooperative enterprise and operation is now examined. Cooperative principles previously summarized are used as guides. Incorporation statutes are examined for evidence of these principles. The search is generally organized around four statements of principles, supplemented with the seven criteria of Farmer Cooperative Service's report *Cooperative Criteria*.⁶⁷

Analysis begins by identifying a broad statement of cooperative enterprise goals in principles and statutes. This is followed by analysis of statutes regarding association control, return of net margins, and limited returns on invested capital. Finally, some of the "nonessential" principles found in several formulations of cooperative principles are addressed.

GENERAL STATEMENT

Three statements from *Cooperative Criteria* summarize much thought underlying cooperative operations. "The basic purpose of a cooperative is to render economic benefits to its members." "Cooperatives are organized around the mutual interests of members." "Cooperatives are essentially nonprofit enterprises in the sense that they are not organized to make monetary gains for cooperatives as legal entities or for their members as investors, but primarily for all patrons as users of their services."

Statutes, too, may use general terms to state a principle, then add specific, more "operational" requirements. Such is the case with statements about the "nonprofit" nature of cooperatives. Twenty-nine statutes in 27 States contain a statement "[a]ssociations organized hereunder shall be deemed 'nonprofit' inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers."⁶⁸ Seven additional statutes describe cooperative

⁶⁷Savage and Volkin, *Cooperative Criteria*.

⁶⁸*Alabama*: Ala. Code § 2-10-51 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-703(B) (1977) (Similar); *Arkansas*: Ark. Stat. Ann. § 77-902 (1981) and Ark. Stat. Ann. § 77-1001 (1981); *California*: Cal. Food & Agric. Code § 54033 (West 1968) and Cal. Corp. Code § 12201 (West Supp. 1985); *Colorado*: Colo. Rev. Stat. 7-56-103(4) (1973); *Florida*: Fla. Stat. Ann. § 618.01(4) (West 1977); *Georgia*: Ga. Code § 2-10-82 (1982); *Idaho*: Idaho Code § 22-2602 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 441(e) (Smith-Hurd 1954); *Kansas*: Kan. Stat. Ann. § 17-1602 (1981); *Kentucky*: Ky. Rev. Stat.

associations as nonprofit, giving as reasons cooperatives' primary object is "not to pay dividends on invested capital but render service and provide means and facilities by or through which producers of agricultural products may receive a reasonable and fair return for their products" or words to that effect.⁶⁹ Statutes in both categories not only give the general principle of "nonprofit" operation, but add reasons as well. Statutes clearly explain that though cooperatives are corporate entities, and as such are "persons" capable under law of generating profit for themselves, a cooperative entity is not organized to do so. Investors in a corporate entity operate it to generate returns on investment, but in a cooperative such returns are not its reason for existence. Rather, the organization operates as a vehicle to contribute to producers' own operations by marketing products, supplying factors of production, or providing needed services to users' economic production units. Statutory provisions, summary though they are, encompass both operating methods and cooperative purposes.

These statutes give reasons a cooperative is deemed nonprofit. Many statutes also say a cooperative is nonprofit or is operated for the mutual benefit of its members. Frequently included is a provision that a stated number of producers may form a "nonprofit, cooperative association." Forty-one statutes representing 34 States emphasize the nonprofit character of cooperatives by direct statement,⁷⁰ while operation for the mutual benefit

§ 272.010(3) (1981); *Louisiana*: La. Rev. Stat. Ann. § 122 (West 1973); *Minnesota*: Minn. Stat. Ann. § 308.52(7) (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-3 (1972); *Missouri*: Mo. Ann. Stat. § 274.020(2) (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-103(5) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1401 (1983); *New Mexico*: N.M. Stat. Ann. § 76-12-3(E) (1978); *North Carolina*: N.C. Gen. Stat. § 54-130 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.01 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361b(e) (West 1973); *Rhode Island*: R.I. Gen. Laws § 7-7-5 (1969); *South Carolina*: S.C. Code Ann. § 33-47-20 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-103(e) (1980); *Texas*: Tex. Agric. Code Ann. § 52.003 (Vernon 1982); *Washington*: Wash. Rev. Code Ann. § 24.32.010 (1969); and *Wyoming*: Wyo. Stat. § 17-10-102(e) (1977).

⁶⁹*Hawaii*: Hawaii Rev. Stat. § 421-1(4) (1976); *Kentucky*: Ky. Rev. Stat. § 272.011(2) (1981); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1774(3) (1981); *New York*: N.Y. Coop. Corp. Law § 3(d) (McKinney 1951); *Utah*: Utah Code Ann. § 3-1-2(5) (1982); and *Virginia*: Va. Code 13.1-313(c) (1978).

⁷⁰*Alabama*: Ala. Code § 2-10-52 (1975) and Ala. Code § 2-10-91 (1975) ("not for profit but for service to ... members"); *Arizona*: Ariz. Rev. Stat. Ann. § 10-703(A) (1977); *Arkansas*: Ark. Stat. Ann. § 77-903 (1981); *Colorado*: Colo. Rev. Stat. § 7-55-101(d) (1973) and Colo. Rev. Stat. § 7-56-104 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-195 (West 1958) ("without profit to the association itself"); *Florida*: Fla. Stat. Ann. §§ 619.01, 619.03 (West 1977); *Idaho*: Idaho Code § 22.2603 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 442 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-2(e)

of members is described as a characteristic of cooperatives by other statutes in summary descriptions of a cooperative or in statements about the general character of the organization to which the act applies.⁷¹ Sixty-four statutes include “nonprofit” or “mutual benefit” (or both) descriptions of cooperatives.

The simplicity of mutual benefit and nonprofit statutory descriptions of cooperatives is deceptive. The differences such statements draw between a cooperative and noncooperative corporation are fundamental. The very justifications of the two types of corporate enterprises’ existence are basically opposed. Noncooperative corporations’ desire to create wealth for investors contrasts sharply with cooperative corporations’ object to benefit the users as producers of agricultural products.

The incorporation statutes do not, as a group, leave cooperative principle descriptions to general statements of nonprofit or mutual operation, although they are useful reminders that statutes are designed for a special kind of enterprise. Principles and criteria are described more specifically in statutory requirements for certain kinds of structure or operation by organizations wishing to gain sanctions of cooperative incorporation statutes.

(Burns 1983); *Iowa*: Iowa Code Ann. § 498.1 (West 1949) (“not for pecuniary profit”); *Kansas*: Kan. Stat. Ann. § 17-1603(a) (1981); *Louisiana*: La. Rev. Stat. Ann. § 123 (West 1973); *Maryland*: Md. Corps. & Ass’ns Code Ann. § 5-526 (1975) (“may operate on a nonprofit basis”); *Michigan*: Mich. Comp. Laws § 450.98 (Mich. Stat. Ann. § 21.99 (Callaghan 1983)) (“shall be considered nonprofit”); *Mississippi*: Miss. Code Ann. § 79-17-7 (1972) and Miss. Code Ann. § 79-19-5 (1972); *Missouri*: Mo. Ann. Stat. § 274.030 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-104 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1402 (1983); *Nevada*: Nev. Rev. Stat. § 81.010 (1979) and Nev. Rev. Stat. §§ 81.410, 81.420 (1979); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:1 (IV) (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-2 (West 1973) and N.M. Stat. Ann. § 76-12-4 (West 1978); *New Mexico*: N.M. Stat. Ann. § 53-4-1(1) (1983); *North Carolina*: N.C. Gen. Stat. § 54-131 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.05 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) (“not conducted for profit”) and Okla. Stat. Ann. tit. 2, § 361c (West 1973); *Rhode Island*: R.I. Gen. Laws § 7-7-2 (1969); *South Carolina*: S.C. Code Ann. § 33-47-70 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-104 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(3) (Vernon 1980) (“subject to nonprofit corporation statute”) and Tex. Agric. Code Ann. § 51.007(a) (Vernon 1982); *Vermont*: Vt. Stat. Ann. tit. 11, §§ 991, 993 (1984); *Virginia*: Va. Code § 13.1-312 (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.020 (1969); *West Virginia*: W. Va. Code §§ 19-4-2, -1(c) (1984); and *Wyoming*: Wyo. Stat. § 17-10-103 (1977).

⁷¹ *California*: Cal. Corp. Code § 12201 (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-55-101(d) (1973); *Florida*: Fla. Stat. Ann. § 618.01(3) (West 1977); *Hawaii*: Hawaii Rev. Stat. § 421-1(2) (1976 & Supp. 1984); *Illinois*: Ill. Ann. Stat. ch. 32, § 441(c) (Smith-Hurd 1954); *Iowa*: Iowa Code Ann. § 498.3 (West 1949); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1774(3) (1981); *Maryland*: Md. Corps. & Ass’ns Code Ann. § 5-501(b) (1975); *Massachusetts*: Mass. Ann. Laws ch. 157, § 10 (Michie/Law. Co-

COOPERATIVE CONTROL

“Cooperatives are democratically controlled.”⁷² “Cooperatives are owned and democratically controlled by those who use their services.”⁷³ “A cooperative is democratically controlled by its members on the basis of their status as member-users and not as investors in the capital structure of the cooperative.”⁷⁴ Perhaps no single principle is so clearly defined in law, or so consistently identified as a unique cooperative characteristic, as the way users control their cooperative. Voting power, the voting process and director selection rules, certain aspects of cooperatives’ policymaking and management structure, and member rights to participate in cooperative affairs express the member-control principle.

Voting Power

The number of votes to which a member is entitled may logically be based on number of shares of voting stock owned (or more generally in proportion to equity owned), the amount of business done with the organization, or may be assigned on a “personal” basis. The “democratic control” requirement found in cooperative principles is sometimes stated as a one-member, one-vote rule, but may also describe voting on the basis of business done with the cooperative (patronage-based voting). In either case, universal stock-based voting rules of business corporations are sharply modified to accommodate the “democratic control” principle of cooperative operation.

Fifty-five statutes in 36 States limit individual cooperative members’ voting

op. 1979 & Supp. 1985); *Nevada*: Nev. Rev. Stat. § 81.020(1) (1983) (“mutual benefit of members”); *New Mexico*: N.M. Stat. Ann. § 76-12-3(c) (1978); *New York*: N.Y. Coop. Corp. Law §§13(c), 111(a) (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. § 54-111 (1982) (“may associate on mutual plan”) and N.C. Gen. Stat. § 54-130(2) (1982) (foreign cooperative); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973) (“mutual help” and “mutual benefit of members”) and Okla. Stat. Ann. tit. 2, § 361b (West 1973) (foreign cooperative); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12104(4) (Purdon Supp. 1984-1985) (foreign cooperative); *Texas*: Tex. Rev. Civ. Stat. Ann. art. 1396-50.01(5) (Vernon 1980) (“for the primary and mutual benefit of the members”) and Tex. Agric. Code Ann. § 50.012(a) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-2(b) (1982); *Virginia*: Va. Code § 13.1-313(c) (1978) (foreign cooperative); and *Washington*: Wash. Rev. Code Ann. § 23.86.020 (1969) (“for mutual welfare”).

⁷²A “cooperative criterion.” Savage and Volkin, *Cooperative Criteria*

⁷³A cooperative principle. See above at text accompanying footnotes, 7-9.

⁷⁴A cooperative definition. Savage and Volkin, *Cooperative Criteria*, U.S.D.A. FCS Serv. Rept. 71 (1965)

power to one vote per member regardless of equity invested in the cooperative.⁷⁵

Five additional statutes permit the association to limit its vote to one vote per member,⁷⁶ and eight others (seven States) say if voting power is not

⁷⁵ *Alabama*: Ala. Code § 2-10-62 (1975) and Ala. Code §§ 2-10-97, -98 (1975); *Arkansas*: Ark. Stat. Ann. § 64-1509 (1980) (“voting by members, not by stock”), Ark. Stat. Ann. § 77-914 (1981), and Ark. Stat. Ann. § 77-1014 (1981); *Colorado*: Colo. Rev. Stat. § 7-56-116(5) (1973) and Colo. Rev. Stat. § 7-57-104 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-190 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8534 (1974); *Georgia*: Ga. Code § 2-10-91 (1982) (except forestry cooperatives); *Idaho*: Idaho Code § 22-2614 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 454.5 (Smith-Hurd 1954) (associations without capital stock); *Iowa*: Iowa Code Ann. § 497.11 (West 1949), Iowa Code Ann. § 498.17 (West 1949), and Iowa Code Ann. § 499.28 (West 1949); *Kansas*: Kan. Stat. Ann. §§ 17-1502 and 1511 (1981); *Kentucky*: Ky. Rev. Stat. § 272.020(4) (1981); *Louisiana*: La. Rev. Stat. Ann. § 82 (West 1973), and La. Rev. Stat. Ann. § 133 (West 1973); *Maryland*: Md. Corps. & Ass’n Code Ann. § 5-501(b)(1) (1975 & Supp. 1984); *Massachusetts*: Mass. Ann. Laws ch. 157, § 2 (Michie/Law. Co-op. 1979) and Mass. Ann. Laws ch. 157, § 4 (Michie/Law. Co-op. 1979 & Supp. 1985); *Minnesota*: Minn. Stat. Ann. §§ 308.06(2)(4)(8), 308.07(3) (West 1969 & Supp. 1985) and Minn. Stat. Ann. § 308.65 (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-21 (1972) (for membership cooperative, but one vote per share for stock cooperative § 79-17-23); *Missouri*: Mo. Ann. Stat. § 274.050(3) (Vernon 1963) and Mo. Ann. Stat. § 357.100 (Vernon 1966); *Montana*: Mont. Code Ann. § 35-15-403 (1983) and Mont. Code Ann. § 35-17-305(4) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1406 (1983); *Nevada*: Nev. Rev. Stat. § 81.020(2) (1983) and Nev. Rev. Stat. § 81.190(3) (1973); *New Mexico*: N.M. Stat. Ann. § 53-4-13 (1983); *North Carolina*: N.C. Gen. Stat. § 54-120 (1982) and N.C. Gen. Stat. § 54-148(e) (1982); *North Dakota*: N.D. Cent. Code § 10-15-16(2), (3) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.10(G) (Page 1978) (association organized without capital stock); *Oklahoma*: Okla. Stat. Ann. tit. 2, §§ 332, 339 (West 1973), Okla. Stat. Ann. tit. 2, § 361i (West 1973) (stated in bylaw approval section), and Okla. Stat. Ann. tit. 18, § 427 (West 1973); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12006 (Purdon 1967) and Pa. Stat. Ann. tit. 15, § 12114(a) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-10 (1969); *South Carolina*: S.C. Code Ann. § 33-45-90 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-16-10, 11, 12 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-126 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(16)(a) (Vernon 1980), Tex. Agric. Code Ann. § 51.013 (Vernon 1982), and Tex. Agric. Code Ann. § 52.085(a) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-10(e) (1982); *Virginia*: Va. Code § 13.1-302 (1978) and Va. Code § 13.1-321(e) (1978); *Washington*: Wash. Rev. Code Ann. § 23.86.110 (1969); *West Virginia*: W. Va. Code § 19-4-13 (1984); *Wisconsin*: Wis. Stat. Ann. §§ 185.21(1)(a), 12(2) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-110(e) (1977).

⁷⁶ *Indiana*: Ind. Code Ann. § 15-7-1-13(d) (Burns 1983); *Kansas*: Kan. Stat. Ann. § 17-1613 (1981); *Kentucky*: Ky. Rev. Stat. § 272.201(5) (1981); *Michigan*: Mich. Comp. Laws § 450.101 (Mich. Stat. Ann. § 21.102 (Callaghan 1983)); and *Nebraska*: Neb. Rev. Stat. § 21-1303(2) (1983).

equal, the method used must be given in articles of incorporation.⁷⁷ Where statutes permit unequal voting, they frequently impose a one-member, one-vote rule in default unless an alternative method is specifically required by cooperative documents. Voting power based on amount of business done with the association is specifically permitted in 12 States.⁷⁸ Alaska⁷⁹ and Oregon⁸⁰ say voting power may be based on actual, estimated, or potential patronage, or a combination of methods. One Massachusetts statute notes relevant patronage measurement is that of the preceding year.⁸¹ Other statutes do not describe permissible plans in detail. If statutes referring specifically to patronage-based voting are added to those giving cooperatives power to use voting based on other than a one-member, one-vote rule, 24 statutes make patronage voting an option available to cooperatives incorporated under the statutes. By jurisdiction, 28 States have one or more statutes under which patronage-based voting power is permissible.

Several variations exist in voting rules. For example, Arizona⁸² and New Mexico⁸³ limit voting power if based on actual patronage. They say in no case shall a member have more than five votes, and a member is allowed no more than one vote because of the amount of membership capital owned.

⁷⁷*California*: Cal. Food & Agric. Code § 54081(e) (West 1968) and Cal. Corp. Code § 12310(d) (West Supp. 1985) (articles) and § 12401(b) (West Supp. 1985) (in membership certificate disclosure statement); *Florida*: Fla. Stat. Ann. § 619.04(6) (West 1977 & Supp. 1985); *Hawaii*: Hawaii Rev. Stat. §§ 421-8(2), 10(e) (1976); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1911(5) (1981); *Nevada*: Nev. Rev. Stat. §§ 81.440(6), 490 (1979); *New Hampshire*: N.H. Rev. Stat. Ann. § 301.4(VI), (VII) (1977); and *Washington*: Wash. Rev. Code Ann. § 24.32.160 (1969).

⁷⁸*Alaska*: Alaska Stat. § 10.15.130(a) (1968); *Arizona*: Ariz. Rev. Stat. Ann. §§ 10-706(A)(17), -709 (Supp. 1984-1985); *Florida*: Fla. Stat. Ann. § 618.15 (West 1977); *Hawaii*: Hawaii Rev. Stat. §§ 421-8(2), -10(e) (1976); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1826(2) (1981); *Massachusetts*: Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979 & Supp. 1985); *New Jersey*: N.J. Stat. Ann. § 4:13-24.1 (West 1973) (with limitations); *New Mexico*: N.M. Stat. Ann. § 76-12-11(A) (1978); *New York*: N.Y. Coop. Corp. Law §§ 44, 46 (McKinney 1951 & Supp. 1984-1985); *Oregon*: Or. Rev. Stat. § 62.265(1) (1979); *South Carolina*: S.C. Code Ann. § 33-47-840 (Law. Co-op. 1976) (as one of several options); and *Vermont*: Vt. Stat. Ann. tit. 11, § 1001(9) (1984).

⁷⁹Alaska Stat. § 10.15.130(a) (1968).

⁸⁰Or. Rev. Stat. § 62.265(1) (1979).

⁸¹Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979).

⁸²Ariz. Rev. Stat. Ann. § 10-709 (Supp. 1984-1985).

⁸³N.M. Stat. Ann. § 76-12-11(D) (1978).

Massachusetts⁸⁴ and Vermont⁸⁵ allow voting power based on amount of land used to produce products handled by the association, in addition to patronage-based voting power.

Few cooperative incorporation statutes adhere to traditional corporate voting-by-share principles. Both Mississippi statutes assign one vote per share, but also limit voting shares to one-twentieth of the total number of cooperative shares.⁸⁶ A few other statutes, for example Ohio, do not strictly forbid a one-vote-per-share rule.⁸⁷ A few statutes not addressing the voting power issue apparently leave those requirements to other laws applicable to the organization absent provisions in the cooperative incorporation statute. South Carolina explicitly permits voting based on stock ownership, but not to exceed 20 percent of the shares of stock in the association.⁸⁸

In sum mary, almost all cooperative incorporation statutes contain a provision on member voting power. Fifty-five limit voting power to one vote per member, with others permitting the cooperative to deviate in some specified fashion from a one-member, one-vote rule.

Federated cooperatives may present special problems of member-voting power. Nine statutes otherwise limiting voting power to one vote per member modify the rule for federated cooperatives whose members are other cooperatives rather than individual farmers.⁸⁹

Three require a one-member, one-vote rule if member association membership includes both individual and association members, but permit other voting rules if the entire membership is composed of associations.⁹⁰

⁸⁴Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979).

⁸⁵Vt. Stat. Ann. tit. 11, § 1001(9) (1984).

⁸⁶Miss. Code Ann. § 79-17-23 (1972) and Miss. Code Ann. § 17-19-25 (1972).

⁸⁷The one-vote-per-member rule in Ohio (Ohio Rev. Code Ann. § 1729.10(G) (Page 1978)) applies only to nonstock cooperatives.

⁸⁸S.C. Code Ann. § 33-47-480 (Law. Co-op. 1976).

⁸⁹*California*: Cal. Corp. Code § 12314 (West Supp. 1985); *Minnesota*: Minn. Stat. Ann. § 308.07(4) (West 1969), and Minn. Stat. Ann. § 308.65 (West 1969); *New Mexico*: N.M. Stat. Ann. § 53-4-13 (1983); *North Carolina*: N.C. Gen. Stat. § 54-148(e) (1982); *North Dakota*: N.D. Cent. Code § 10-15-16(2) (1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-11 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(16)(a) (Vernon 1980) and Tex. Agric. Code Ann. § 52.085(b) (Vernon 1982) (citrus cooperatives); and *Wisconsin*: Wis. Stat. Ann. § 185.12(a), (b) (West 1957).

⁹⁰North Carolina, North Dakota, and South Dakota.

The association itself may establish voting power rules for mixed associations according to four statutes.⁹¹

Four statutes permit federation voting power based either on patronage or on the number of members in the member association,⁹² while membership or patronage measures are also mentioned in three other statutes as a basis for votes given to member associations.⁹³

Voting and Director Selection

Other topics addressed in incorporation statutes relate closely to the way votes are cast and directors chosen, given voting power granted individual members. Examples are proxy voting, mail voting, cumulative voting, delegate systems, and districting of board positions. Proxy voting and director districting are discussed here as significant expressions of cooperative control principles, the other topics receiving only passing mention.

In a proxy vote, an owner of a voting share of stock or a membership gives another the right to cast the owner's vote. In publicly held corporations proxy voting is frequently a substantial factor in the balance of voting power. Proxy solicitation may be subject to securities law regulation. In cooperatives, the more typical use of proxy votes is simply to give another member the right to cast the vote of a member unable to attend a member meeting, often with directions about how to cast the vote. Though it is seldom, if ever, used to circumvent a one-member, one-vote rule, most cooperative statutes mention proxy voting.

Cooperative incorporation statutes are split on the right to cast votes by proxy. Thirty-one States (44 statutes) permit proxy votes by direct or indirect reference.⁹⁴

⁹¹ *Kentucky*: Ky. Rev. Stat. § 272.201(6) (1981); *New Mexico*: N.M. Stat. Ann. § 53-4-13 (1983); *North Carolina*: N.C. Gen Stat. § 54-148(e) (1982); and *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(16)(a) (Vernon 1980).

⁹² California, Minnesota, North Dakota, and South Dakota. See footnote 89 for citations.

⁹³ California, Minnesota, and Wisconsin. See footnote 89 for citations.

⁹⁴ *Alabama*: Ala. Code § 2-10-58(3) (1975) and Ala. Code § 2-10-96 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10.706(a)(3) (1977 & Supp. 1984-1985); *Arkansas*: Ark. Stat. Ann. § 77-910(c) (1981) and Ark. Stat. Ann. § 77-1010(2) (1981) and § 77-1030 (Supp. 1983) (proxy mentioned in voting proportion requirements); *California*: Cal. Food & Agric. Code § 54114 (West 1968); *Florida*: Fla. Stat. Ann. § 618.09(3) (West 1977) and Fla. Stat. Ann. § 619.06(6) (West 1977); *Georgia*: Ga. Code § 2-10-86

Many use Standard Act terminology stating bylaws may provide the “right of members or stockholders to vote by proxy or by mail or both; and the conditions, manner, form, and effects of such votes.”⁹⁵ In sharp contrast to 44 statutes permitting proxy voting, 23 statutes in 19 States prohibit proxy voting by direct statement or by requiring articles or bylaws to prohibit proxy voting.⁹⁶

(1982); *Idaho*: Idaho Code § 22-2610(c) (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 325 (Smith-Hurd 1954) (written proxy) and Ill. Ann. Stat. ch. 32, § 449(c) (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-9(d) (Burns 1983); *Kansas*: Kan. Stat. Ann. § 17-1609(c) (1981); *Kentucky*: Ky. Rev. Stat. § 272.151(2)(c) (1981); *Louisiana*: La. Rev. Stat. Ann. § 78(3) (West 1973) and La. Rev. Stat. Ann. § 129(3) (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1823(9) (1981) (articles may provide); *Massachusetts*: Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979 & Supp. 1985); *Michigan*: Mich. Comp. Laws § 450.100 (Mich. Stat. Ann. § 21.101 (Callaghan 1983) (articles may prohibit, printed on certificate); *Minnesota*: Minn. Stat. Ann. § 308.60(3) (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-17(c) (1972); *Missouri*: Mo. Ann. Stat. § 274.090(1)(3) (Vernon 1963) and Mo. Ann. Stat. § 357.130(2)(3) (Vernon 1966); *Montana*: Mont. Code Ann. § 35-16-207 (1983) and Mont. Code Ann. § 35-17-206(2)(c) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1303(6) (1983) (articles or bylaws may permit), and Neb. Rev. Stat. § 21-1406 (1983) (articles may prohibit); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:11(III) (1977); *New York*: N.Y. Coop. Corp. Law § 44 (McKinney 1951 & Supp. 1984-1985) (not permitted if voting proportional or unequal); *North Carolina*: N.C. Gen. Stat. § 54-122 (1982) (sickness or unavoidable absence, no member may vote more than one proxy) and N.C. Gen. Stat. § 54-136(3) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.11(C) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 339 (West 1973) (with restrictions), Okla. Stat. Ann. tit. 2, § 361(c) (West 1973), and Okla. Stat. Ann. tit. 18, § 427 (West 1953); *Oregon*: Or. Rev. Stat. § 62.195(1) (1979) (note prohibition on proxy voting, § 62.265(2)); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12118 (Purdon Supp. 1984-1985) (with restrictions); *South Carolina*: S.C. Code Ann. § 33-45-100 (Law. Co-op. 1976) (proxy noted) and S.C. Code Ann. § 33-47-810(3) (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-114(2) (1980); *Texas*: Tex. Agric. Code Ann. §§ 52.052(4), 52.085 (Vernon 1982); *Virginia*: Va. Code § 13.1-301.2(b) (1978) and Va. Code §§ 13.1-316(i), -319(b) (1978); and *West Virginia*: W. Va. Code § 19-4-8(c) (1984).

⁹⁵The Standard Act, § 10(c).

⁹⁶*Alaska*: Alaska Stat. § 10.15.130(b) (1968); *California*: Cal. Corp. Code § 12405 (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-55-110 (1973) (after 1973), Colo. Rev. Stat. § 7-56-111(c) (1973), and Colo. Rev. Stat. § 7-57-104 (1973); *Delaware*: Del. Code Ann. tit. 3, § 8534 (1974); *Iowa*: Iowa Code Ann. § 498.18 (West 1949), and Iowa Code Ann. § 499.29 (West 1949); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-521(b) (1975); *Minnesota*: Minn. Stat. Ann. § 308.07(3) (West 1969); *New Jersey*: N.J. Stat. Ann. § 4:13-24 (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-14 (1983), and N.M. Stat. Ann. § 76-12-10(c) (1978); *New York*: N.Y. Coop. Corp. Law § 44 (McKinney 1951 & Supp. 1984-1985) (not permitted if voting is proportional or unequal); *North Dakota*: N.D. Cent. Code § 10-15-16(4) (1976); *Oregon*: Or. Rev. Stat. § 62.265(2) (1979) (note permission for proxy voting § 62.195(1)); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12006 (Purdon 1967); *Rhode Island*: R.I. Gen. Laws § 7-7-10 (1969); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-13 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(17) (Vernon 1980); *Utah*: Utah Code Ann. § 3-1-10(e) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 995(9) (1984) (articles shall prohibit); and *Wisconsin*: Wis. Stat. Ann. § 185.12(3) (West 1957).

One of the most important direct roles members play in their cooperative is selecting a board of directors to represent them. Effective representation may often be possible when members cast votes for directors at large. As frequently the case when a general rule is applied in specific situations, basic goals of the general rule may not be realized. For example, a one-member, one-vote rule applied at large to elect directors may create underrepresentation of members with minority interests in the cooperative. A majority group of producers representing a particular function or geographic area would, by one-member, one-vote rules, dominate board of director representation.

Geographic distribution and numerical size of member groups, and distribution of interests among membership groups may suggest a plan by which groups of members choose a director of “their own.” This may be accomplished by using “districts” from which directors are chosen, especially where geographic interests are important. A majority of cooperative incorporation statutes let bylaws require and describe director election by district. A typical provision reads, “the bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to elect the directors apportioned to such districts and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered final as to the association.”⁹⁷

Thirty-four statutes representing 31 States contain similar terminology.⁹⁸ Twenty-one additional statutes (21 States) note districts or territories in

⁹⁷The Standard Act, § 12.

⁹⁸*Alabama*: Ala. Code § 2-10-60 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-711(A) (1977 & Supp. 1984-1985); *Arkansas*: Ark. Stat. Ann. § 77-912 (1981) and Ark. Stat. Ann. § 77-1012 (1981); *California*: Cal. Food & Agric. Code §§ 54142, 54143 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-113(1) (1973); *Florida*: Fla. Stat. Ann. §§ 618.04(8), 618.12(1) (West 1977); *Georgia*: Ga. Code § 2-10-87 (1982); *Hawaii*: Hawaii Rev. Stat. §§ 421-8(5), 13(d) (1976); *Idaho*: Idaho Code § 22-2612 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 451 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-11(c) (Burns 1983); *Kansas*: Kan. Stat. Ann. § 17-1611 (1981); *Kentucky*: Ky. Rev. Stat. § 272.171(2) (1981); *Louisiana*: La. Rev. Stat. Ann. § 80 (West 1973) and La. Rev. Stat. Ann. § 131 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1871(4) (1981); *Minnesota*: Minn. Stat. Ann. § 308.62 (West 1969); *Mississippi*: Miss. Code

substantially different language.⁹⁹ Three statutes let articles provide for territories, and also permit bylaws to restrict votes for district directors to members in that territory.¹⁰⁰ (This does not mean other statutes prohibit the practice.) Iowa requires the number of members in the territories be as equal as possible.¹⁰¹

Several other types of provisions in incorporation statutes regulate other aspects of cooperative control procedures, not described here. They include voting by mail provisions,¹⁰² voting representation by corporate members,¹⁰³ voting where membership stock is held until fully paid,¹⁰⁴ or voting by subscribers.¹⁰⁵ These provisions are further evidence of the

Ann. § 79-19-21 (1972); *Missouri*: Mo. Ann. Stat. § 274.110(2) (Vernon 1963); *Montana*: Mont. Code Ann. § 35-15-304(5) (1983) and Mont. Code Ann. § 35-17-311(1) (1983); *New Hampshire*: N.H. Rev. Stat. Ann. §§ 301:16, 17 (1977); *New York*: N.Y. Coop. Corp. Law § 61 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-146(a) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.13 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 344 (West 1973); *South Carolina*: S.C. Code Ann. § 33-47-910 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-116 (1980); *Utah*: Utah Code Ann. § 3-1-13(IV) (1982); *Virginia*: Va. Code § 13.1-324(d) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.110 (1969); *West Virginia*: W. Va. Code § 19-4-10 (1984); and *Wyoming*: Wyo. Stat. § 17-10-111 (1977).

⁹⁹*Alabama*: Ala. Code § 2-10-99(12) (1975); *Alaska*: Alaska Stat. §§ 10.15.130(c), 10.15.140(a) (1968); *California*: Cal. Corp. Code § 12333 (West Supp. 1985); *Delaware*: Del. Code Ann. tit. 3, § 8510(1), (2) (1974); *Iowa*: Iowa Code Ann. § 499.36(4) (West 1949); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-514(1), (2) (1975); *Massachusetts*: Mass. Ann. Laws ch. 157, § 4 (Michie/Law. Co-op. 1979) and Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979 & Supp. 1985); *Minnesota*: Minn. Stat. Ann. § 308.07(5)-(7) (West 1969 & Supp. 1985); *Montana*: Mont. Code Ann. § 35-16-311 (1983); *Nebraska*: Neb. Rev. Stat. §§ 21-1403, 1405(1) (1983); *Nevada*: Nev. Rev. Stat. § 81.050(1) (1983); *New Jersey*: N.J. Stat. Ann. § 4:13-24.2 (West 1973); *New Mexico*: N.M. Stat. Ann. §§ 53-4-12, 18 (1983) and N.M. Stat. Ann. § 76-12-7(1) (1978); *North Dakota*: N.D. Cent. Code § 10-15-25(3) (1976 & Supp. 1983); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361f(i) (West 1973); *Oregon*: Or. Rev. Stat. § 62.255(5) (a) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12122(c) (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-6(m) (1969); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-17-1, 4 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(21)(b) (Vernon 1980) and Tex. Agric. Code Ann. § 52.103(f) (Vernon 1982) (in removal provision); *Vermont*: Vt. Stat. Ann. tit. 11, §§ 995(10), 1007, 1008 (1984); *Virginia*: Va. Code § 13.1-301.2(b), (e) (1978); and *Wisconsin*: Wis. Stat. Ann. §§ 185.31(1), (3) (West 1957).

¹⁰⁰North Dakota, South Dakota, and Wisconsin.

¹⁰¹Iowa Code Ann. § 499.36(4) (West 1949).

¹⁰²See Baarda, *State Statutes*, § 11.04.

¹⁰³See *Ibid.* § 11.05.

¹⁰⁴See *Ibid.* § 11.06.

¹⁰⁵See *Ibid.* § 11.08.03.

importance of membership control as a basic cooperative principle recognized by statute.

Management Structure

Many facets of an enterprise's management structure influence the organization's control. A complete list of all cooperative incorporation statute provisions relating to management would be extensive. In this section only a few provisions are discussed as representative of cooperatives' democratic control principle. These have to do with director qualifications. What makes cooperative boards of directors unique representatives of electing members? Statutory provisions on this question may be divided into three parts: qualification of individuals who may serve as directors, the choice process, and director removal, the latter two emphasizing who has power to choose and remove directors.

Of the three classes of provisions, director qualification is most indicative of the uniqueness of cooperative control by its members. Most statutes mention director qualification as a bylaws subject. In addition to whatever optional qualification an association may place in its bylaws, a majority of statutes make certain qualifications mandatory.

The most common director qualification requires directors to be association members. The director-member requirement is most commonly expressed in Standard Act language which says directors are to be "elected by members or stockholders from among their own number."¹⁰⁶ Fifty-seven statutes representing 40 States require directors be association members.¹⁰⁷

¹⁰⁶The Standard Act, § 12.

¹⁰⁷*Alabama*: Ala. Code § 2-10-60 (1975) and Ala. Code § 2-10-94 (1975); *Alaska*: Alaska Stat. § 10.15.140(a) (1968); *Arizona*: Ariz. Rev. Stat. Ann. § 10-711 (1977 & Supp. 1984-1985); *Arkansas*: Ark. Stat. Ann. § 64-1508 AR1D and Ark. Stat. Ann. § 77-912 (1981); *Colorado*: Colo. Rev. Stat. § 7-55-104 (1973) and Colo. Rev. Stat. § 7-56-113(1) (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-185 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8521(a) (1974); *Georgia*: Ga. Code § 2-10-87 (1982); *Idaho*: Idaho Code § 22-2612 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 311 (Smith-Hurd 1954); *Iowa*: Iowa Code Ann. § 497.5 (West 1949), Iowa Code Ann. § 498.8 (West 1949), and Iowa Code Ann. § 499.36(1) (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1510 (1981) and Kan. Stat. Ann. § 17-1611 (1981); *Kentucky*: Ky. Rev. Stat. § 272.171(1) (1981); *Louisiana*: La. Rev. Stat. Ann. § 131 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1871(1) (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-512 (1975 & Supp. 1984); *Minnesota*: Minn. Stat. Ann. § 308.11 (West Supp. 1985) and Minn. Stat. Ann. § 308.62 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-21 (1972); *Missouri*: Mo. Ann. Stat. § 274.110(1) (Vernon 1963) and Mo. Ann. Stat. § 357.080(1) (Vernon 1966); *Montana*: Mont. Code Ann. § 35-15-304(4) (1983),

For farmer cooperative statutes requiring members to be farmer producers, this of course means the cooperative's board of directors will be composed of farmers. Eleven statutes let officers, directors, or members of member associations in a federation be directors. Three others say a representative of a member not a natural person may be a director.

There are a few explicit exceptions to the all-member board of directors requirement. Two States require a majority of directors be members.¹⁰⁸ Two others require two-thirds be members or representatives of member associations in a federated organization.¹⁰⁹ Indiana requires directors "be engaged or have a direct interest in the production of agricultural products," and further lets bylaws require membership or patronage as a condition for director qualification.¹¹⁰

Another exception to all-member boards of directors is permission to appoint or choose a director whose duty is to represent the public interest rather than primarily members' interests. Permission is contained in 28 statutes in 25 States.¹¹¹ Three States contain language suggesting

Mont. Code Ann. § 35-16-314 (1983), and Mont. Code Ann. § 35-17-311 (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:15 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-19 (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-18 (1983) and N.M. Stat. Ann. § 76-12-14 (1978); *New York*: N.Y. Coop. Corp. Law § 60 (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. § 54-123 (1982) and N.C. Gen. Stat. § 54-146(a) (1982); *North Dakota*: N.D. Cent. Code § 10-15-25(1) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.13 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 344 (West 1973), Okla. Stat. Ann. tit. 2, § 361n (West 1973), and Okla. Stat. Ann. tit. 18, § 429 (West 1953); *Oregon*: Or. Rev. Stat. § 62.280(1) (1983); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12122(a) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-45-100 (Law. Co-op. 1976) and S.C. Code Ann. § 33-47-910 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-17-1, 4 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-116 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(21)(a) (Vernon 1980) and Tex. Agric. Code Ann. § 52.101(c) (Vernon 1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1006 (1984); *Virginia*: Va. Code § 13.1-324(a) (1978); *Washington*: Wash. Rev. Code Ann. § 23.86.080 (1969) and Wash. Rev. Code Ann. § 24.32.110 (1969); *West Virginia*: W. Va. Code § 19-4-10 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.31(1) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-111 (1977).

¹⁰⁸*Colorado*: Colo. Rev. Stat. § 7-55-104 (1973) (if in articles or bylaws) and *Louisiana*: La. Rev. Stat. Ann. § 80 (West 1973).

¹⁰⁹*Hawaii*: Hawaii Rev. Stat. § 421-13(a) (1976) and *Utah*: Utah Code Ann. § 3-1-13(1) (1982).

¹¹⁰Ind. Code Ann. § 15-7-1-11(h), (i) (Burns 1983).

¹¹¹*Alabama*: Ala. Code § 2-10-60 (1975); *Arkansas*: Ark. Stat. Ann. § 77-912 (1981) and Ark. Stat. Ann. § 77-1012 (1981); *California*: Cal. Food & Agric. Code § 54145 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-55-104 (1973) and Colo. Rev. Stat. § 7-56-113(1) (1973); *Florida*: Fla. Stat. Ann. § 618.12(1) (West 1977); *Georgia*: Ga. Code

appointment of public directors is mandatory.¹¹² The usual limit on total number of such appointed directors is one-fifth of the board. The Florida statute gives a one-third limit, although some statutes place no explicit limit on appointed directors. A typical description of the public director appointment process is found in the Standard Act: "The bylaws may provide that one or more directors may be appointed by any public official or commission or by the other directors selected by the members or their delegates. Such directors shall represent primarily the interest of the general public in such associations. The director or directors so appointed need not be members or stockholders of the association; but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors."¹¹³

Directors are chosen by cooperative members, either directly by vote or by districting and delegate systems. The general rule is modified only for public director or when a vacancy on the board is filled by remaining directors. Rules concerning election and vacancies are not discussed here, although member-election rules generally preserve member control over affairs of the association.¹¹⁴

Removing directors from office is likewise described in a substantial number of statutes, and removal procedures are given in most. Key to

§ 2-10-87 (1982); *Idaho*: Idaho Code § 22-2612 (1977); *Illinois*: Ill. Ann. Stat. ch. 32 § 451 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-11(d) (Burns 1983); *Kentucky*: Ky. Rev. Stat. § 272.171(3) (1981); *Louisiana*: La. Rev. Stat. Ann. § 80 (West 1973) and La. Rev. Stat. Ann. § 131 (West 1973); *Minnesota*: Minn. Stat. Ann. § 308.62 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-21 (1972); *Missouri*: Mo. Ann. Stat. § 274.110(3) (Vernon 1963); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:18 (1977); *New York*: N.Y. Coop. Corp. Law § 61(d) (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-146(b) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729:13 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 344 (West 1973); *South Carolina*: S.C. Code Ann. § 33-47-910 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-116 (1980); *Vermont*: Vt. Stat. Ann. tit. 11, § 1009 (1984); *Virginia*: Va. Code § 13.1-1-324(a) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.110 (1969); and *West Virginia*: W. Va. Code § 19-4-10 (1984). Massachusetts (Mass. Ann. Laws ch. 157, § 13 (Michie/Law. Co-op. 1979 & Supp. 1985)) lets bylaws provide for nonmember "advisory" directors.

¹¹²Minnesota ("the bylaws shall provide that one or more directors may be appointed by the commissioner or any other public official or commission"), Virginia ("the bylaws shall provide that one or more directors shall be appointed by the Director of the State Agricultural Extension Service"), and Washington ("if the director of agriculture so requires"). Citations are found in footnote 111.

¹¹³The Standard Act, § 12.

¹¹⁴For more detail see Baarda, *State Statutes*, Chapter 12.

discussing cooperative principles and statutes is the requirement that director removal be voted on by the cooperative's membership. Just as directors are chosen by members, so they are removed by members. Membership participation in the director removal process is noted in 42 States by 54 statutes.¹¹⁵ Most statutes require a majority vote of members to remove a director.

A typical provision, based on the Standard Act, says "Any member may bring charges against an officer or director by filing in writing with the secretary of the association, together with a petition signed by ten percent of the members, requesting removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer

¹¹⁵ *Alabama*: Ala. Code § 2-10-63 (1975); *Alaska*: Alaska Stat. § 10.15.155 (1968); *Arizona*: Ariz. Rev. Stat. Ann. § 10-713 (1977); *Arkansas*: Ark. Stat. Ann. § 64-1508 AR1D and Ark. Stat. Ann. § 77-915 (1981); *California*: Cal. Food & Agric. Code § 54150 (West 1968) and Cal. Corp. Code §§ 12362, 12363 (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-56-117(1) (1973); *Delaware*: Del. Code Ann. tit. 3, § 8523 (1974); *Florida*: Fla. Stat. Ann. § 618.14 (West 1977); *Georgia*: Ga. Code § 2-10-89 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-14 (1976); *Idaho*: Idaho Code § 22-2615 (1977); *Illinois*: Ill. Ann. Stat. ch. 32 § 311 (Smith-Hurd 1954) and Ill. Ann. Stat. ch. 32 § 455 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-14 (Burns 1983); *Iowa*: Iowa Code Ann. § 497.6 (West 1949) and Iowa Code Ann. § 499.38 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1510 (1981) and Kan. Stat. Ann. § 17-1614 (1981); *Kentucky*: Ky. Rev. Stat. § 272.020(2) (1981) and Ky. Rev. Stat. § 272.261 (1981); *Louisiana*: La. Rev. Stat. Ann. § 134 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1872 (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-518 (1975); *Minnesota*: Minn. Stat. Ann. § 308.11 (West 1969 & Supp. 1985) and Minn. Stat. Ann. § 308.66 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-27 (1972); *Missouri*: Mo. Ann. Stat. § 274.140 (Vernon 1963) and Mo. Ann. Stat. § 357.080(1) (Vernon 1966); *Montana*: Mont. Code Ann. § 35-17-313 (1983); *New Mexico*: N.M. Stat. Ann. § 53-4-20 (1983); *New York*: N.Y. Coop. Corp. Law § 63 (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-123 (1982) and N.C. Gen. Stat. § 54-149 (1982); *North Dakota*: N.D. Cent. Code § 10-15-25(4) (1976 & Supp. 1981) ("unless the bylaws provide otherwise"); *Ohio*: Ohio Rev. Code Ann. § 1729.16 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 345 (West 1973) and Okla. Stat. Ann. tit. 18, § 430 (West 1953); *Oregon*: Or. Rev. Stat. § 62.280(4) (1983); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12124(a) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-45-110 (Law. Co-op. 1976) and S.C. Code Ann. § 33-47-950 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-17-5 (1983) ("unless the bylaws provide otherwise"); *Tennessee*: Tenn. Code Ann. § 43-16-130 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(23) (Vernon 1980) and Tex. Agric. Code Ann. § 52.103 (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-14 (1982); *Virginia*: Va. Code § 13.1-325 (1978); *Washington*: Wash. Rev. Code Ann. § 23.86.080 (1969) and Wash. Rev. Code Ann. § 24.32.200 (1969); *West Virginia*: W. Va. Code § 19-4-14 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.31(4) (West 1957) ("unless the bylaws provide otherwise"); and *Wyoming*: Wyo. Stat. § 17-10-113(a) (1977).

against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.” A shorter statement found in some statutes simply says a majority of members at a legally called meeting may remove a director for cause and fill the vacancy. Other statutes, though using the general Standard Act form, require only a majority vote of members at the meeting for removal. North Dakota, South Dakota, and Wisconsin let bylaws say otherwise. Seven statutes give a majority of members at a meeting the right to remove a director. Other statutes’ vote proportion requirements are higher. A two-thirds vote of members at a meeting is required for removal by four statutes,¹¹⁶ votes representing two-thirds of the association members voting power by three,¹¹⁷ and three-fourths of members voting in person or by mail by one statute.¹¹⁸ Some statutes require a petition signed by only 5 percent of the members to initiate director-removal proceedings. Where directors are elected by district, statutes often describe removal by district.

Member Participation

A fourth set of statutory provisions directly reflecting the principle cooperatives are democratically owned and controlled by those who use them are provisions discussing member meetings. Member participation is inherent in voting rights and choice of representative boards of directors. In addition, active participation, and thus control, of a cooperative organization is further elaborated by statutory member rights going significantly beyond those normally accorded noncooperative corporate shareholders. In this section, four general topics concerning direct member participation are analyzed—regular member meetings, special meetings, referenda, and books and records available to members.

Annual member meetings are explicitly required by most cooperative incorporation statutes. Statutory mention of meeting requirements is made in 39 States by 47 statutes.¹¹⁹ The most common requirement is “in its

¹¹⁶Delaware, New Mexico, Oklahoma, and Virginia.

¹¹⁷Hawaii, Kentucky, and Maine.

¹¹⁸New York.

¹¹⁹*Alabama*: Ala. Code § 2-10-59 (1975); *Alaska*: Alaska Stat. § 10.15.120(a), (b) (1968); *Arizona*: Ariz. Rev. Stat. Ann. § 10-714 (1977); *Arkansas*: Ark. Stat. Ann. § 77-911 (1981) and Ark. Stat. Ann. § 77-1011 (1981 & Supp. 1983); *California*: Cal. Corp. Code § 12460(b) (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-56-112

bylaws, each association shall provide for one or more regular meetings annually," a statement found in about 30 statutes.¹²⁰ Variations exist in terminology and meeting requirements. Many references to member meetings do not make a requirement statement. For example, a number of statutes say the bylaws "may" provide for one or more regular meetings annually, rather than "shall." Only mandated meeting provisions are listed in the footnote.¹²¹

While regular meetings are an important expression of members' control of their cooperative, a more distinct feature of statutory membership control requirements is "special" meetings. States with special meeting provisions grant members a right to ask for a special meeting for certain purposes. When statutory requirements are met, the board of directors is required to call such a meeting. Statutory requirements for special meetings are noted here, along with certain interesting procedural features outlined by statute.

Forty-nine statutes in 43 States permit special member meetings in addition to annual or regular meetings.¹²² The board's right to call a special meeting

(1973); *Florida*: Fla. Stat. Ann. § 618.11 (West 1977); *Georgia*: Ga. Code § 2-10-92 (1982); *Idaho*: Idaho Code § 22-2611 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 450 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-10 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.27 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1610 (1981); *Louisiana*: La. Rev. Stat. Ann. § 79 (West 1973) and La. Rev. Stat. Ann. § 130 (West 1973); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-519(a) (1975); *Minnesota*: Minn. Stat. Ann. § 308.09(1) (West 1969 & Supp. 1985) and Minn. Stat. Ann. § 308.61 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-19 (1972); *Missouri*: Mo. Ann. Stat. § 274.100 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-15-302(2) (1983) and Mont. Code Ann. § 35-17-305(1) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1408 (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:12 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-18(a) (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-10 (1983) and N.M. Stat. Ann. § 76-12-13 (1978); *North Carolina*: N.C. Gen. Stat. § 54-116(4) (1982) and N.C. Gen. Stat. § 54-137 (1982); *North Dakota*: N.D. Cent. Code § 10-15-17(2) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.12 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361m (West 1973); *Oregon*: Or. Rev. Stat. § 62.255(2) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12013 (Purdon 1967) (quarterly meetings) and Pa. Stat. Ann. tit. 15, § 12119 (Purdon Supp. 1984-1985); *Rhode Island*: R.I. Gen. Laws § 7-7-14 (1969); *South Carolina*: S.C. Code Ann. § 33-47-820 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-2 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-115 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(13)(a) (Vernon 1980) and Tex. Agric. Code Ann. § 52.083(a) (Vernon 1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1002 (1984); *Washington*: Wash. Rev. Code Ann. § 24.32.100 (1969); *West Virginia*: W. Va. Code § 19-4-9 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.13(2) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-112 (1977).

¹²⁰Standard Act terminology, § -11.

¹²¹See also Baarda, *State Statutes*, § 11.10.02.

¹²²*Alabama*: Ala. Code § 2-10-59 (1975); *Alaska*: Alaska Stat. § 10.15.120(c) (1968);

and duty to call a special meeting on members' demand is summarized in a typical provision: "The board of directors shall have the right to call a special meeting at any time; and ten percent of the stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors."¹²³ Iowa ("unless otherwise provided in the articles") and Minnesota require a 20 percent petition of members to demand a special meeting. In addition, they permit a board majority to call a special meeting. California requires a special meeting at the request of named persons or by request of 5 percent of the members. Alaska lets the president call a meeting, as does Oregon, and four statutes permit the board president to call a special meeting, as well as by request of stockholders or members with one-fifth the votes that could be cast at such a meeting.¹²⁴ Other statutes mention special meetings without a detailed description of how they may be called. These references are not included in this discussion.

Arizona: Ariz. Rev. Stat. Ann. § 10-714 (1977); *Arkansas*: Ark. Stat. Ann. § 77-911 (1981) and Ark. Stat. Ann. § 77-1011 (1981 & Supp. 1983); *California*: Cal. Corp. Code § 12460(e) (West Supp. 1985) and § 12705 (referendum) (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-56-112 (1973); *Florida*: Fla. Stat. Ann. § 618.11 (West 1977); *Georgia*: Ga. Code § 2-10-92 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-12 (1976); *Idaho*: Idaho Code § 22-2611 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 450 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-10 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.27 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1610 (1981); *Kentucky*: Ky. Rev. Stat. § 272.161 (1981); *Louisiana*: La. Rev. Stat. Ann. § 79 (West 1973) and La. Rev. Stat. Ann. § 130 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1827 (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-519(c) (1975); *Massachusetts*: Mass. Ann. Laws ch. 157, § 4 (Michie/Law. Co-op. 1979 & Supp. 1985) (reference to districts only); *Minnesota*: Minn. Stat. Ann. § 308.09(2) (West 1969 & Supp. 1985) and Minn. Stat. Ann. § 308.61 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-19 (1972); *Missouri*: Mo. Ann. Stat. § 274.100 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-15-302(3) (1983) and Mont. Code Ann. § 35-17-305(2) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1408 (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:13 (1977); *New Mexico*: N.M. Stat. Ann. 53-4-10 (1983) and N.M. Stat. Ann. § 76-12-13 (1978); *North Carolina*: N.C. Gen. Stat. § 54-137 (1982); *North Dakota*: N.D. Cent. Code § 10-15-17(3) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.12 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361m (West 1973); *Oregon*: Or. Rev. Stat. § 62.255(3) (1979); *Rhode Island*: R.I. Gen. Laws § 7-7-14 (1969); *South Carolina*: S.C. Code Ann. § 33-47-820 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-3 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-115 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(13)(a) (Vernon 1980) and Tex. Agric. Code Ann. § 52.083(a), (b) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-12 (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1003 (1984); *Virginia*: Va. Code § 13.1-323 (1978); *Washington*: Wash. Rev. Code Ann. § 24.32. (1969); *West Virginia*: W. Va. Code § 19-4-9 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.13(3) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-112 (1977).

¹²³The Standard Act, § 11.

¹²⁴Montana, North Dakota, South Dakota, and Wisconsin.

A third indication of direct membership participation in cooperative management is the provision for submitting a board decision to the membership by referendum. The general procedure is described in typical language as follows: "Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting; provided, however, that a special meeting may be called for the purpose."¹²⁵ Over half the States (26 in 28 statutes) provide for member referendum similar to that described by Standard Act language.¹²⁶

The requirement that one-third of the board vote for a referendum is modified in five statutes with two setting a majority,¹²⁷ three using a two-fifth figure,¹²⁸ and one setting a 40 percent requirement.¹²⁹ Several States let the membership demand a referendum in similar circumstances.¹³⁰ California mentions only demand by members (20 percent), rather than a board-initiated referendum.

Specific referendum provisions in some statutes should not, of course, suggest important questions may not be submitted to the membership for decision or board guidance. Referenda as described by statute are specifically related to approval or disapproval of a completed board act.

¹²⁵The Standard Act, § 16.

¹²⁶*Alabama*: Ala. Code § 2-10-64 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-715 (1977); *Arkansas*: Ark. Stat. Ann. § 77-916 (1981) and Ark. Stat. Ann. § 77-1015 (1981); *Colorado*: Colo. Rev. Stat. § 7-56-118 (1973); *Delaware*: Del. Code Ann. tit. 3, § 8510(1) (1974); *Florida*: Fla. Stat. Ann. § 618.16 (West 1977); *Georgia*: Ga. Code § 2-10-93 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-17 (1976); *Idaho*: Idaho Code § 22-2616 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 456 (Smith-Hurd 1954); *Iowa*: Iowa Code Ann. § 499.39 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1615 (1981); *Louisiana*: La. Rev. Stat. Ann. § 135 (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1875 (1981); *Minnesota*: Minn. Stat. Ann. § 308.67 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-29 (1972); *Missouri*: Mo. Ann. Stat. § 274.150 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-314 (1983); *New Mexico*: N.M. Stat. Ann. § 53-4-21 (1983); *North Carolina*: N.C. Gen. Stat. § 54-150 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.17 (Page 1978); *South Carolina*: S.C. Code Ann. § 33-47-830 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-132 (1980); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(24) (Vernon 1980) and Tex. Agric. Code Ann. § 52.105 (Vernon 1982); *Virginia*: Va. Code § 13.1-328 (1978); and *West Virginia*: W. Va. Code § 19-4-15 (1984).

¹²⁷Arizona and New Mexico.

¹²⁸Hawaii, Maine, and Virginia.

¹²⁹Montana.

¹³⁰New Mexico and Texas (10 percent of members by written petition); Virginia (20 percent).

Effective control of cooperative associations by their members depends on the quality of information available to members in the decision-making process. Statutes usually indicate kinds of information available to members (books, records of account, minutes of meetings, or lists of members) and give general guidelines on time and reasons for inspection. Some statutes require distribution, usually annually or at the annual meeting. Information about associations' financial structure and operations is mentioned in a number of States, with 27 statutes representing 23 States requiring cooperatives' books either be open to inspection by members or distributed to members.¹³¹ In addition to member information, a substantial number of cooperative statutes require cooperatives to file specified books and records annually with a designated State office. These appear to be generally unavailable for public inspection. Provisions about member information in cooperative incorporation statutes may not be unique to cooperative organizations. Business corporation laws applying to cooperative organizations may give inspection rights even where not specifically granted by cooperative incorporation statutes.

The overall impact of member control, cooperative management provisions described, as well as numerous related topics in the statutes not discussed in this report, is to establish the cooperative control concept clearly and firmly in law. Laws designed specifically for farmer cooperatives contrast sharply with noncooperative corporation laws whenever a completely different rule is required by principle. Examples are one-member, one-vote and patronage-based voting rules, farmer-director membership requirements, and special member demanded meetings. In other cases, such as regular

¹³¹ *Alaska*: Alaska Stat. § 10.15.315 (1968); *Arkansas*: Ark. Stat. Ann. § 64-1511(B)-(D) (1981); *California*: Cal. Food & Agric. Code § 54204 (West 1968) and Cal. Corp. Code § 12340 (West Supp. 1985) (articles and bylaws, §§ 12580-12608); *Delaware*: Del.Code Ann. tit. 3, § 8538 (1974); *Hawaii*: Hawaii Rev. Stat. § 421-22 (1976); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-529(d) (Supp. 1984); *Minnesota*: Minn. Stat. Ann. § 308.09(1) (West 1969 & Supp. 1985) and Minn. Stat. Ann. § 308.903 (West 1969); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:40 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-34 (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-33 (1983); *New York*: N.Y. Coop. Corp. Law § 75 (McKinney 1951 & Supp. 1984-1985); *North Dakota*: N.D. Cent. Code § 10-15-35 (1976); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 3611(a) (West 1973) and Okla. Stat. Ann. tit. 18, § 434 (West 1953); *Oregon*: Or. Rev. Stat. § 62.440(1) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, §§ 12005, 12013 (Purdon 1967) and Pa. Stat. Ann. tit. 15, § 12112.2 (Purdon Supp. 1984-1985); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-20-2, 3, 4 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(35) (Vernon 1980); *Vermont*: Vt. Stat. Ann. tit. 11, § 1026 (1984); *Virginia*: Va. Code § 13.1-333 (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.250 (1969); *West Virginia*: W. Va. Code § 19-4-19 (1984); *Wisconsin*: Wis. Stat. Ann. § 185.47(1) (West 1957); and *Wyoming*: Wyo. Stat. § 17-10-119 (1977).

member meeting requirements, director-election rules, and member information, rules not opposed to noncooperative business corporation rules are emphasized and placed in the context of special cooperative corporation needs and uses. Explicit statutory requirements, implicit patterns, and variations among States provide a rich source of information about how a general principle, “cooperatives are owned and democratically controlled by those who use their services,” is defined and implemented in practical circumstances faced by farmers and their cooperatives.

RETURN OF NET MARGINS BASED ON COOPERATIVE USE

“The basic purpose of a cooperative is to render economic benefits to its members.”¹³² “Cooperatives are essentially nonprofit enterprises in the sense that they are not organized to make monetary gains for cooperatives as legal entities or for their members as investors, but primarily for all patrons as users of their services.”¹³³ “Risks, costs, and benefits are shared equitably among members.”¹³⁴ “Surplus is distributed to users in proportion to their use of the cooperative.”¹³⁵ “In a cooperative the investment and operational risks, benefits gained, or losses incurred are shared equitably by its members in proportion to their use of the cooperative’s services.”¹³⁶

The relation of member to cooperative primarily as a user of its services rather than an investor is reflected in the above criteria, principles, and definitions. Returning net margins to users on the basis of business done is a fundamental principle of cooperative operation, though in practice the same result may be reached many ways given the particular organization under consideration. Basic distinctions between cooperative and noncooperative corporations have been described earlier in the report in mutuality of interest and nonprofit operation provision analysis. Mechanisms and principles of net margin distribution are added to cooperative goals to elaborate and confirm the second cooperative principle.

Each cooperative association has its own operating method. Patronage refund mechanics depend upon specific circumstances. Though generalization is difficult, three questions give focus on how cooperative

¹³²Savage and Volkin, *Cooperative Criteria* (1965).

¹³³*Ibid.*

¹³⁴*Ibid.*

¹³⁵Summary of numerous statements of principle, above.

¹³⁶From cooperative definition in *Cooperative Criteria*.

principles are implemented. First, what is the net margin available for distribution or retention by the cooperative? Second, to whom is the margin distributed? Third, how are eligible margins apportioned among eligible recipients? These questions are frequently not answered directly by statutes describing how a cooperative operates. It is helpful to organize the patronage refund process into several steps somewhat more closely resembling statutory approaches to the net margins distribution process.

Generation and disposition of net margins by a cooperative using the patronage refund method to return benefits to patrons can be divided into four steps, each of which may be described by statute.¹³⁷

1. Net margins available for distribution to patrons are determined in two stages. The total excess of income over expenses (including advances to patrons for product delivered) is first found, then the portion determined to be patronage related income available for distribution may be separated for special treatment.¹³⁸ Subtractions from net margins may be permitted or required, reducing amounts available for distribution to patrons in proportion to business done with the association. For example, common permission to distribute some net margin in proportion to equity ownership (dividends on capital stock, for example) rather than patronage is usually described by statute in the net margin calculation description.¹³⁹ Other required uses or reserve establishment may be contained in statutes.

2. Not all cooperative users may be eligible to receive part of the net margins as patronage refunds. A typical example is a cooperative dealing with nonmembers on a nonpatronage basis, returning no net margins to nonmember patrons. After disqualifying this group of users, the cooperative has a determined amount of funds to distribute to a defined group of patrons.¹⁴⁰

¹³⁷Other methods of operation may arrive at results consistent with cooperative principles, yet not use patronage refunds. Pooling arrangements are one example.

¹³⁸Identifying nonpatronage-sourced income is generally important for income tax purposes, especially for cooperatives not qualifying as “exempt” under I.R.C. § 521. See I.R.C. § 1388(a) for definition of “patronage dividend.” It is noted here, however, to emphasize total net margin may be made up of components with different characteristics, perhaps requiring separate treatment in the refund process.

¹³⁹See the following section for limitations on how much net margin may be diverted from the use-based distribution path and paid out as dividends on capital stock.

¹⁴⁰Amounts distributed to member-patrons from margins generated by business with nonpatrons who receive no refunds are not patronage refunds (“dividends”) for tax purposes (I.R.C. § 1388(a)).

3. The proportion of net margins distributed to each patron depends on two factors. The cooperative must decide how operating results (margins or losses) will be segregated or combined if the cooperative has multiple operations serving separate groups of farmers and the operations have different margins or losses. Secondly, the proportion of each patron's business with the cooperative is determined, and each patron's portion of eligible refunds is determined. Step three thus determines allocation of margins to eligible recipients.

4. The final step in the refund process is distribution. Form of distribution (cash or notices evidencing retention of refund amounts as contributions to capital) does not affect implementation of the cooperative distribution principle.¹⁴¹

Analysis of incorporation statutes reveals varying types of reference to the four steps outlined. Three characteristics of statutory descriptions of the four steps demonstrate the cooperative principle earnings are distributed to users in proportion to amount of business done with the cooperative:

1. net margins are distributed rather than retained by the cooperative business entity;
2. net margins are distributed to patrons of the cooperative as users, not investors; and
3. refunds are allocated in proportion to use of the cooperative. This discussion focuses on statutory provisions yielding, by either permissive or mandatory operation, three described consequences when the cooperative's patronage refund methods follow statutory guidelines.

Fifty-five statutes in 43 States discuss procedures by which net margins are distributed rather than retained as profit by the organization.¹⁴² Not all

¹⁴¹The single most important influence on distribution mechanics is Federal income tax law. It is, of course, designed for a very specific purpose and, although often an excellent reflection of cooperative principles and definitions, is not a general rule of operation.

¹⁴²*Alabama*: Ala. Code § 2-10-103 (1975); *Alaska*: Alaska Stat. § 10.15.275 (1968); *Arkansas*: Ark. Stat. Ann. § 64-1510 (1980); *California*: Cal. Corp. Code § 12201 (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-55-101 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-193 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8535 (1974); *Florida*: Fla. Stat. Ann. § 618.15 (West 1977); *Georgia*: Ga. Code § 2-10-106 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-11(c) (1976); *Illinois*: Ill. Ann. Stat. ch. 32 § 319

statutes are written to unequivocally require a particular method of operation leading to a principles-related result for all net margins. Some statutes use multiple references to a procedure to emphasize the cooperative principle, and some seem to use the term “cooperative plan” as a self-explanatory description.¹⁴³

In addition, many statutes recognize cooperatives need reserves for various purposes, or note use of some undistributed net margins for special purposes such as educational activities. In many statutory provisions the restrictive nature of permission to set up only certain reserves limits a cooperative’s opportunity to retain margins rather than distribute them. Many “reserve” provisions are closely associated with necessary expenses, such as contingency reserves. Thus, additions to contingency reserves may be considered expenses of doing business in arriving at net margins remaining after all necessary expenses have been subtracted from gross income. After subtractions from net margins are made for permitted

(Smith-Hurd 1954) and Ill. Ann. Stat. ch. 32 § 454.4 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-13(f) (Burns 1983); *Iowa*: Iowa Code Ann. § 497.19 (West 1949), Iowa Code Ann. § 498.23 (West 1949), and Iowa Code Ann. § 499.30 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1501 (1981) and Kan. Stat. Ann. § 17-1609(j) (1981); *Kentucky*: Ky. Rev. Stat. § 272.010(1) (1981); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1912(3) (1981); *Maryland*: Md. Corps. & Ass’ns Code Ann. § 5-525(a) (1975); *Massachusetts*: Mass. Ann. Laws ch. 157, § 2 (Michie/Law. Co-op. 1979) and Mass. Ann. Laws ch. 157, § 6 (Michie/Law. Co-op. 1979); *Michigan*: Mich. Comp. Laws § 450.106 (Mich. Stat. Ann. § 21.107 (Callaghan 1983)); *Minnesota*: Minn. Stat. Ann. § 308.12(1) (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-28 (1972); *Missouri*: Mo. Ann. Stat. § 357.130(1) (Vernon 1966); *Montana*: Mont. Code Ann. § 35-15-412 (1983) and Mont. Code Ann. § 35-17-315(2) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1302(3) (1983); *Nevada*: Nev. Rev. Stat. § 81.240(2) (1979); *New Jersey*: N.J. Stat. Ann. §§ 4:13-32, -33 (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-31 (1983) and N.M. Stat. Ann. § 76-12-12(D) (1978); *New York*: N.Y. Coop. Corp. Law §§ 3(k), 72 (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. §§ 54-126, -127 (1982); *North Dakota*: N.D. Cent. Code § 10-15-33 (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.10(F) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 347 (West 1973), Okla. Stat. Ann. tit. 2, §§ 361(b), (d) (West 1973), and Okla. Stat. Ann. tit. 18, § 432 (West 1953); *Oregon*: Or. Rev. Stat. § 62.415(1) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12015 (Purdon 1967) and Pa. Stat. Ann. tit. 15, § 12126 (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-45-180 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-16-41 to 53 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(34)(a) (Vernon 1980) and Tex. Agric. Code Ann. § 51.007 (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-11(c) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 481 (1984); *Virginia*: Va. Code § 13.1-306 (1978) and Va. Code § 13.1-322(e) (1978); *Washington*: Wash. Rev. Code Ann. §§ 23.86.160, 170 (1969); *Wisconsin*: Wis. Stat. Ann. § 185.45 (West 1957); and *Wyoming*: Wyo. Stat. §§ 17-10-115(a), -116(a) (1977).

¹⁴³One Minnesota statute requires the organization be operated “upon the cooperative plan” (Minn. Stat. Ann. § 308.05 (West 1969)), requires distribution of profits as prescribed in bylaws (§ 308.03), and details methods of doing so. (§ 308.06).

reserves, almost all statutes cited in footnote 142 use mandatory language to require the remainder be distributed. Thus, search of statutes for expressions of cooperative principles clearly yields the first of three characteristics of operation on a cooperative basis regarding flow of income through the cooperative to users in proportion to their use of the enterprise.

Once it is determined net margins must be distributed rather than retained by the cooperative as “profit”, the possibility still remains they will be made to member-shareholders based on investment in the organization rather than in proportion to business done or on some other basis. Members’ opportunity to benefit from a cooperative’s net margins through stock ownership is limited by common statutory limitation on dividend payments and associated limits on other returns on capital, principles discussed in the following section.

After it is determined the cooperative does not retain net margins as corporate entity profits, and further does not base distribution of net margins upon equity ownership, it remains to be seen how incorporation statutes describe the patronage basis of distributions, reflecting the margin distribution cooperative principle.

Fifty-two statutes in 41 States give some description of the apportionment process.¹⁴⁴ Statutory provisions vary widely in terminology and detail of apportionment descriptions.

¹⁴⁴*Alabama*: Ala. Code § 2-10-103 (1975); *Alaska*: Alaska Stat. §§ 10-15.275, 285 (1968); *Arkansas*: Ark. Stat. Ann. § 64-1503 (1980); *California*: Cal. Corp. Code §§ 12201, 12805(c) (West Supp. 1985); *Colorado*: Colo. Rev. Stat. § 7-55-101(a) (1973); *Delaware*: Del. Code Ann. tit. 3, § 8535 (1974); *Florida*: Fla. Stat. Ann. § 618.15 (West 1977); *Georgia*: Ga. Code § 2-10-106 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-11(c) (1976); *Illinois*: Ill. Ann. Stat. ch. 32, §§ 319, 323 (Smith-Hurd 1954) and Ill. Ann. Stat. ch. 32, § 454.4 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-13(f) (Burns 1983); *Iowa*: Iowa Code Ann. § 497.19 (West 1949), Iowa Code Ann. § 498.23 (West 1949), and Iowa Code Ann. §§ 499.2, 499.30 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1501 (1981) and Kan. Stat. Ann. § 17-16-09 (1981); *Kentucky*: Ky. Rev. Stat. § 272.010(1) (1981); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1912(3) (1981); *Maryland*: Md. Corps. & Ass’ns Code Ann. § 5-525(d) (1975); *Massachusetts*: Mass. Ann. Laws ch. 157, § 2 (Michie/Law. Co-op. 1979) and Mass. Ann. Laws ch. 157, § 6(4) (Michie/Law. Co-op. 1979); *Michigan*: Mich. Comp. Laws § 450.106 (Mich. Stat. Ann. § 21.107 (Callaghan 1983)); *Minnesota*: Minn. Stat. Ann. § 308.06(2)(8) (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-28 (1972); *Missouri*: Mo. Ann. Stat. § 357.130(1) (Vernon 1966); *Montana*: Mont. Code Ann. § 35-15-401(2) (1983) and Mont. Code Ann. § 35-17-315(2) (1983); *Nebraska*: Neb. Rev. Stat. § 21-1302(3) (1983); *New Jersey*: N.J. Stat. Ann. §§ 4:13-32, -33 (West 1973); *New Mexico*: N.M. Stat. Ann. § 53-4-31(4) (1983) and N.M. Stat. Ann. § 76-12-12(D) (1978); *New York*: N.Y. Coop. Corp. Law §§ 3(k), 72 (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. § 54-126 (1982); *North Dakota*: N.D. Cent.

Twelve statutes say amounts available for distribution to patrons be apportioned on a patronage basis. Twenty describe apportionment on the basis of purchases, sales, business, or other similar terms. Eight statutes include labor or wages as an apportionment criterion, a type of provision useful to describe the operations of a workers' cooperative rather than a farmer producer cooperative.

Twenty-one statutes say apportionment must be made in proportion or prorated according to the ratio of an individual patron's business to total business, though apportionment on a "patronage basis" described in other statutes would surely be calculated in a similar fashion. Ten of those statutes specifically permit allocation by department, commodity, or type of patronage.

A second set of provisions common to many cooperative incorporation statutes suggests a kind of operation leaving the cooperative entity with no excess either for itself or to be distributed on a basis other than in proportion to use. A typical statute describes association powers to use a marketing contract between patrons and the cooperative and includes reference to distribution of sales proceeds to the patron. The usual provision states a marketing contract may provide the association pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses. Often listed as expenses are "interest" on preferred and common stock, stock retirement reserves, and other "proper" reserves. Thirty-eight statutes in 36 States make a similar statement leading to distribution of "margins" (on a contract-by-contract basis) in relation to each patron's business with the cooperative.¹⁴⁵

Code § 10-15-33(4) (1976); *Ohio*: Ohio Rev. Code Ann. § 1729.10(F) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 3611(d) (West 1973) and Okla. Stat. Ann. tit. 18, § 432(3) (West 1953); *Oregon*: Or. Rev. Stat. § 62.415(1), (3) (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12015(VI) (Purdon 1967) and Pa. Stat. Ann. tit. 15, § 12126(a), (c) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-45-180(4) (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. §§ 47-16-48, -49 (1983); *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(34)(a)(4) (Vernon 1980) and Tex. Agric. Code Ann. § 51.007(b) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-11(c) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 981(4) (1984); *Virginia*: Va. Code § 13.1-306 (1978) and Va. Code § 13.1-322(e) (1978); *Washington*: Wash. Rev. Code Ann. § 23.86.160 (1969); *Wisconsin*: Wis. Stat. Ann. §§ 185.45(3), (4) (West 1957); and *Wyoming*: Wyo. Stat. §§ 17-10-115(a), -116(b) (1977).

¹⁴⁵*Alabama*: Ala. Code § 2-10-65 (1975) and Ala. Code § 2-10-103 (1975); *Arizona*: Ariz. Rev. Stat. Ann. 10-716(c) (1977); *Arkansas*: Ark. Stat. Ann. § 77-917 (1981); *California*: Cal. Food & Agric. Code § 54262 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-119 (1973); *Connecticut*: Conn. Gen. Stat. Ann. § 33-212 (West 1958); *Delaware*: Del. Code Ann. tit. 3, § 8543 (1974); *Florida*: Fla. Stat. Ann. § 618.17

Total product payment distribution (advances plus patronage refund in a marketing cooperative, for example) will not necessarily be the same for patrons under the net margin allocation and zero profit contract schemes. Where a statute contains both provisions a cooperative should certainly be able to choose the system most suited to its purposes and operating methods.

Statutory provisions requiring a cooperative to distribute net margins to users in proportion to their use of the cooperative, or to otherwise operate on an "at cost" basis, seem designed to recognize the considerable variation in cooperative operating methods. A cooperative association may use alternative practices to reach the same end result, such as pricing on a strictly at-cost basis (if possible), using a fee schedule to just cover costs of providing services instead of incorporating costs in purchase and sale price differentials, or using pooling arrangements resulting in no year-end surplus. In all of these variations, however, the economic principles of cooperatives are preserved and, where net margins are possible, statutes identified in this section require distribution on a cooperative basis.

Something of an exception to a strict operation-on-a-cooperative-basis requirement is found in many States. Forty-six statutes in 40 States give cooperatives power to do business with nonmember producers as well as with members.¹⁴⁶ In most cases there is no accompanying requirement the

(West 1977), and Fla. Stat. Ann. § 619.07(5) (West 1977); *Georgia*: Ga. Code § 12-10-101 (1982); *Idaho*: Idaho Code § 22-2617 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 1457 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-15 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.8 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1616 (1981); *Kentucky*: Ky. Rev. Stat. § 272.221(1) (1981); *Louisiana*: La. Rev. Stat. Ann. § 136 (West 1973); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 15-526 (Supp. 1984); *Massachusetts*: Mass. Ann. Laws ch. 157, § 16 (Michie/Law. Co-op. 1979); *Minnesota*: Minn. Stat. Ann. § 308.68 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-31 (1972); *Missouri*: Mo. Ann. Stat. § 274.200 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-401 (1983); *Nevada*: Nev. Rev. Stat. § 81-120(4) (1979); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:31 (1977); *New York*: N.Y. Coop. Corp. Law § 170(4) (McKinney 1951); *North Carolina*: N.C. Gen. Stat. § 54-152(a) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.18 (Page 1978); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12125(a) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-47-1110 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-133 (1980); *Texas*: Tex. Agric. Code Ann. § 52.016 (Vernon 1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1018 (1984); *Virginia*: Va. Code § 13.1-329(a) (1978); *Washington*: Wash. Rev. Code Ann. § 24.32.210 (1969); *West Virginia*: W. Va. Code § 19-4-16 (1984); and *Wyoming*: Wyo. Stat. §§ 17-10-117, -121(a) (1977).

¹⁴⁶Permission to engage in business with nonmembers as well as the 50 percent limit (noted below) are found in the following States: *Alabama*: Ala. Code § 2-10-54

cooperative deal with nonmembers on a cooperative basis.¹⁴⁷ In all cases in which the cooperative may deal with nonmembers as well as members, cooperatives are required to do at least 50 percent of their business with members. A few statutes prohibit nonmember dealings.¹⁴⁸

Analysis of statutory descriptions of net margin distribution processes, and both specific and general rules cooperatives with net margins must follow, leave no doubt cooperative mutual benefit and net margins returns principles are clearly incorporated in law. Statutes show considerable variation in how specific or detailed requirements are, and in fact many statutes contain no direct reference to net margins distribution. As with other principles and practices, statutes and their variations give considerable

(1975) and Ala. Code § 2-10-99 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-705(1) (1977); *Arkansas*: Ark. Stat. Ann. § 77-906(a) (1981); *California*: Cal. Food & Agric. Code § 54179 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-55-101(a) (1973) and Colo. Rev. Stat. § 7-56-107(a) (1973); *Florida*: Fla. Stat. Ann. § 618.07(11) (West 1977); *Georgia*: Ga. Code § 2-10-94 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-9(b)(8) (1976); *Idaho*: Idaho Code § 22-2606(a) (1977); *Illinois*: Ill. Ann. Stat. ch. 32 § 445(j) (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-5(b) (Burns 1983); *Iowa*: Iowa Code Ann. § 498.3 (West 1949) and Iowa Code Ann. § 499.3 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1604 (1981); *Kentucky*: Ky. Rev. Stat. § 272.211(2) (1981); *Louisiana*: La. Rev. Stat. Ann. § 125(1) (West 1973); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1828(2)(H) (1981); *Maryland*: Md. Corps. & Ass'ns Code Ann. § 5-501(b)(3) (1975); *Michigan*: Mich. Comp. Laws § 450.98 (Mich. Stat. Ann. § 21.99 (Callaghan 1983)); *Minnesota*: Minn. Stat. Ann. § 308.56(1) (West 1969); *Mississippi*: Miss. Code Ann. § 79-17-25 (1972) and Miss. Code Ann. § 79-19-9(a) (West 1969); *Missouri*: Mo. Ann. Stat. § 274.060(1) (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-106 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1303 (1983) (association may prohibit or limit nonmember business) and Neb. Rev. Stat. § 21-1405(3), (7) (1983) (may buy, sell for others, may be agent for nonmember business); *Nevada*: Nev. Rev. Stat. § 81.020(4) (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:3(I) (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-30 (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-6(j) (1978); *New York*: N.Y. Coop. Corp. Law §§ 14(b) and 111(a)(3) (McKinney 1951 & Supp. 1984-1985); *North Carolina*: N.C. Gen. Stat. § 54-117 (1982) and N.C. Gen. Stat. § 54-151(1) (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.03(A) (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. P2, § 361e(j) (West 1973) (except for storage); *Oregon*: Or. Rev. Stat. § 62.845 (1979); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12112(18) (Purdon Supp. 1984-1985); *South Carolina*: S.C. Code Ann. § 33-47-460 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-108 (1980); *Texas*: Tex. Agric. Code Ann. § 52.012(b) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-9(11)(h) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 994(1) (1984); *Virginia*: Va. Code § 13.1-320(b)(9) (1978); and *West Virginia*: W. Va. Code § 19-4-4(a) (1984) (Association may fix terms of nonmember business).

¹⁴⁷A few statutes extend the patronage refund requirement to nonmembers as well as members.

¹⁴⁸For examples: *Massachusetts*: Mass. Ann. Laws ch. 157, § 11 (Michie/Law. Co-op. 1979) and *Oklahoma*: Okla. Stat. Ann. tit. 2, § 341 (West 1973) (except for storage).

information about cooperatives at the same time providing mandatory rules cooperatives must study, interpret, and implement.

LIMITS ON DIVIDENDS

A majority of statutes limit dividends or “interest” paid on capital stock. Limits may apply to common stock, preferred stock, or (rarely) to patronage-based equity. Fifty-five statutes place a definite maximum limit on the amount of interest or dividends (some statutes refer to “interest” and some to “dividends”) that may be paid on common or membership stock. In most cases dividend limitation is found in marketing contract provisions as limits on how much a cooperative may deduct from proceeds before returning the remainder to patrons. Some statutes refer specifically to membership or common stock, but most limit dividends on all stock.

Forty-three statutes representing 36 States limit dividends to 8 percent of the stock’s value.¹⁴⁹ Eight establish a 6 percent maximum.¹⁵⁰ Two statutes

¹⁴⁹ *Alabama*: Ala. Code § 2-10-65 (1975) and Ala. Code § 2-10-98 (1975); *Arkansas*: Ark. Stat. Ann. § 77-917 (1981); *California*: Cal. Food & Agric. Code § 54120 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-119 (1973); *Florida*: Fla. Stat. Ann. § 618.15 (West 1977); *Georgia*: Ga. Code § 2-10-101 §165-215 (1982); *Hawaii*: Hawaii Rev. Stat. § 421-11(b) (1976); *Idaho*: Idaho Code § 22-2617 (1977); *Illinois*: Ill. Ann. Stat. ch. 32, § 454.4 (Smith-Hurd 1954 & Supp. 1984-1985); *Indiana*: Ind. Code Ann. § 15-7-1-15 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.23 (West 1949); *Kansas*: Kan. Stat. Ann. §§ 17-1609(j), 1616 (1981); *Kentucky*: Ky. Rev. Stat. § 272.221(1) (1981); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1912(2) (1981); *Michigan*: Mich. Comp. Laws §§ 450.98, 450.106 (Mich. Stat. Ann.-§§ 21.99, 21.107 (Callaghan 1983)); *Minnesota*: Minn. Stat. Ann. § 308.06(2)(6) (West Supp. 1985) and Minn. Stat. Ann. § 308.68 (West 1969 & Supp. 1985); *Mississippi*: Miss. Code Ann. § 79-17-23 (1972) and Miss. Code Ann. § 79-19-31 (1972); *Missouri*: Mo. Ann. Stat. § 274.200 (Vernon 1963) (not a specific reference to dividends, application not clear from statute alone); *Nebraska*: Neb. Rev. Stat. § 21-1302(2) (1983); *Nevada*: Nev. Rev. Stat. §§ 81.020(3), 81.120(4) (1979); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:31 (1977); *New Jersey*: N.J. Stat. Ann. § 4:13-33 (West 1973); *New Mexico*: N.M. Stat. Ann. § 76-12-7(H) (1978); *North Carolina*: N.C. Gen. Stat. § 54-152(a) (1982); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 332 (West 1973), Okla. Stat. Ann. tit. 2, §§ 3611(c), 3611(f) (West 1973), and Okla. Stat. Ann. tit. 18, § 432(2) (West 1953); *Rhode Island*: R.I. Gen. Laws 7-7-13 (1969); *South Carolina*: S.C. Code Ann. § 33-47-1110 (Law. Co-op. 1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-21 (1983); *Tennessee*: Tenn. Code Ann. § 43-16-133 (1980); *Texas*: Tex. Agric. Code Ann. § 52.016(c) (Vernon 1982); *Utah*: Utah Code Ann. § 3-1-11(b) (1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1018 (1984); *Virginia*: Va. Code § 13.1-306 (1978) and Va. Code § 13.1-322(d) (1978); *Washington*: Wash. Rev. Code Ann. § 23.86.160 (1969) and Wash. Rev. Code Ann. § 24.32.210 (1969 & Supp. 1984-1985); *West Virginia*: W. Va. Code § 19-4-16 (1984); and *Wisconsin*: Wis. Stat. Ann. § 185.21(1)(c) (West Supp. 1985).

¹⁵⁰ *Delaware*: Del. Code Ann. tit. 3, § 8532 (1974); *Montana*: Mont. Code Ann. § 35-15-411 (1983); *New Mexico*: N.M. Stat. Ann. § 53-4-22 (1983); *North Carolina*: N.C.

have a 12 percent limit,¹⁵¹ and two establish a 10 percent maximum.¹⁵² Bylaw or article limitations, without statutorily mandated limits, are noted in three statutes.¹⁵³ One of the New Mexico statutes further limits payment of dividends to 50 percent of the net savings. The “legal rate of interest” is established as the maximum dividend rate in Louisiana,¹⁵⁴ and the “prime rate” is used in Massachusetts.¹⁵⁵

Delaware requires dividends be cumulative. Of 12 other statutes mentioning cumulative dividends on common stock, 7 say dividends may be cumulative¹⁵⁶ and 5 say they may not be cumulative.¹⁵⁷ Alaska refers to “accrued and unpaid dividends” in the statute’s stock redemption section.¹⁵⁸

Almost as many statutes limit dividends paid on preferred stock, either by specific reference to preferred stock or by limitation statements so general they include preferred as well as common stock. Citations to preferred stock limitations are for the most part identical to those for common stock limitation provisions and are not listed separately here. Most preferred stock dividend rates are the same as those set for common stock in each

Gen. Stat. § 54-126 (1982); *North Dakota*: N.D. Cent. Code § 10.15.20(1) (1976); *Pennsylvania*: Pa. Stat. Ann. tit. 15, § 12015(III) (Purdon 1967) (on “permanent stock”, 5 percent on “ordinary stock”); *South Carolina*: S.C. Code Ann. § 33-45-180(1) (Law. Co-op. 1976); and *Wyoming*: Wyo. Stat. §§ 17-10-115(a), -121(a) (1977).

¹⁵¹*Maryland*: Md. Corps. & Ass’n’s Code Ann. § 5-501(b)(2) (Supp. 1984) and *New York*: N.Y. Coop. Corp. Law §§ 72, 111 (McKinney Supp. 1984-1985)

¹⁵²*Iowa*: Iowa Code Ann. § 497.18 (West 1949) and *Missouri*: Mo. Ann. Stat. § 357.130(1) (Vernon 1966).

¹⁵³*Colorado*: Colo. Rev. Stat. § 7-55-101(b) (1973) (dividends on capital stock or interest on equity capital “shall be limited as prescribed” in bylaws); *Oregon*: Or. Rev. Stat. § 62.225 (1979) (articles); and *Texas*: Tex. Rev. Civ. Stat. Ann. § 1396-50.01(25)(a) (Vernon 1980) (eight percent unless otherwise provided in bylaws).

¹⁵⁴La. Rev. Stat. Ann. § 136(B) (West Supp. 1985).

¹⁵⁵Mass. Ann. Laws ch. 157, § 6(2) (Michie/Law. Co-op. Supp. 1985).

¹⁵⁶*Hawaii*: Hawaii Rev. Stat. § 421-11(b) (1976); *Maine*: Me. Rev. Stat. Ann. tit. 13, § 1912(2) (1981); *New Mexico*: N.M. Stat. Ann. § 76-12-7(H) (1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, § 361f(h) (West 1973); *Utah*: Utah Code Ann. § 3-1-11(b) (1982); *Virginia*: Va. Code § 13.1-322(d) (1978); and *Wisconsin*: Wis. Stat. Ann. § 185.21(1)(c) (West 1957).

¹⁵⁷*Iowa*: Iowa Code Ann. § 499.23 (West 1949); *New Mexico*: N.M. Stat. Ann. § 53-4-22 (1983); *North Dakota*: N.D. Cent. Code § 10-15-20(1) (1976); *South Dakota*: S.D. Comp. Laws Ann. § 47-16-21 (1983); and *Wyoming*: Wyo. Stat. §§ 17-10-115(a), -121(a) (1977).

¹⁵⁸Alaska Stat. § 10.15.100 (1968).

statute, though some differ. Other restrictions such as cumulative rights may also differ between common and preferred stock.

Stock dividends limitations make up the third and final major traditional principle, and are frequently and unequivocally applied by most State cooperative incorporation statutes. This principle has been clearly incorporated into fundamental cooperative law. Dividend limitations complement the overall cooperative nonprofit and mutual benefit rules, and give separate specific rules of conduct easily recognized and applied by corporations operating on a cooperative basis.

OTHER PRINCIPLES AND PRACTICES

To this point statutes analyzed have related to the more “fundamental” cooperative principles, principles whose absence draws the cooperative nature of an organization into question. Other principles and practices have been described as well. Some are more akin to business practices (cash trading, for example) and some are desirable attributes not associated with organizations’ structure or basic operation. Examples are open membership, education about cooperatives, and intercooperative cooperation. For the most part these are not generally considered appropriate subjects of statutory provisions.

There are, however, exceptions, two of which are noted here. Statutory reference to intercooperative cooperation is prompted primarily by antitrust considerations, but usually found in a more general context. Thirty-four States, with 37 statutes, follow Standard Act terminology stating: “Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative corporation, association or associations, formed in this or in any other State, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means and agencies for carrying on and conducting their respective business.”¹⁵⁹ Other statutes mention intercooperative

¹⁵⁹Statutes with a similar provision are: *Alabama*: Ala. Code § 2-10-70 (1975); *Arizona*: Ariz. Rev. Stat. Ann. § 10-718(c) (1981); *Arkansas*: Ark. Stat. Ann. § 77-922 (1981) and Ark. Stat. Ann. § 77-1016 (1981); *California*: Cal. Food & Agric. Code § 54181 (West 1968); *Colorado*: Colo. Rev. Stat. § 7-56-126 (1973); *Delaware*: Del. Code Ann. tit. 3, § 8508(10) (1974); *Florida*: Fla. Stat. Ann. § 618.19 (West 1977) and Fla. Stat.

cooperation in somewhat different language, and references to coordination of efforts and cross ownership of cooperative shares are found scattered throughout many statutes. The cooperative education principle is mentioned in several statutes. Education funds are sometimes identified in special reference to them as a permissible reserve cooperatives may establish before returning net margins to patrons. Reserves for educational purposes are found in 13 States.¹⁶⁰

CONCLUSION

Several broad and significant conclusions may be drawn from the analysis. First, cooperative principles are not mere philosophical statements to be neglected when “practical” problems are addressed by cooperatives. Every fundamental cooperative principle, no matter how stated, has been expressed as operational rules in the context of corporate business entity laws, found in cooperative incorporation statutes in every State.

In most cases, cooperative incorporation statutes can be viewed not only as translations of principles into operating rules but as minimum “standards” for true operation on a cooperative basis. Finally, when an organization uses a cooperative incorporation statute to sanction its existence, fundamental decisions about its basic purposes, voting procedures, director selection and removal, meeting structure, distribution of net margins, and dividends

Ann. § 619.07(3) (West 1977); *Georgia*: Ga. Code § 2-10-100 (1982); *Idaho*: Idaho Code § 22-2622 (1977); *Illinois*: Ill. Ann. Stat. ch. 32 463 (Smith-Hurd 1954); *Indiana*: Ind. Code Ann. § 15-7-1-22 (Burns 1983); *Iowa*: Iowa Code Ann. § 499.10 (West 1949); *Kansas*: Kan. Stat. Ann. § 17-1620 (1981); *Kentucky*: Ky. Rev. Stat. § 272.251 (1981); *Louisiana*: La. Rev. Stat. Ann. § 142 (West 1973); *Maryland*: Md. Corps. & Ass’n Code Ann. § 5-524 (1981); *Minnesota*: Minn. Stat. Ann. § 308.75 (West 1969); *Mississippi*: Miss. Code Ann. § 79-19-43 (1972); *Missouri*: Mo. Ann. Stat. § 274.230 (Vernon 1963); *Montana*: Mont. Code Ann. § 35-17-410 (1983); *Nebraska*: Neb. Rev. Stat. § 21-1411 (1983); *Nevada*: Nev. Rev. Stat. § 81.130(4) (1983); *New Hampshire*: N.H. Rev. Stat. Ann. § 301:38 (1977); *New Mexico*: N.M. Stat. Ann. § 76-12-6 (1983); *North Carolina*: N.C. Gen. Stat. § 54-146 (1982); *Ohio*: Ohio Rev. Code Ann. § 1729.19 (Page 1978); *Oklahoma*: Okla. Stat. Ann. tit. 2, 336(j) (West 1973) and Okla. Stat. Ann. tit. 2, § 361(b) (West 1973); *Rhode Island*: R.I. Gen. Laws § 7-7-18 (1969); *South Carolina*: S.C. Code Ann. § 33-47-1140 (Law. Co-op. 1976); *Tennessee*: Tenn. Code Ann. § 43-16-141 (1980); *Texas*: Tex. Agric. Code Ann. § 52.015 (Vernon 1982); *Vermont*: Vt. Stat. Ann. tit. 11, § 1025 (1984); *Washington*: Wash. Rev. Code ann. 24.32.280 (1969); and *West Virginia*: W. Va. Code § 19-4-23 (1984).

¹⁶⁰Examples are: *Alaska*: Alaska Stat. § 10.15.225 (1968); *Missouri*: Mo. Ann. Stat. § 357.130(2)(8) (Vernon 1966); *New Jersey*: N.J. Stat. Ann. § 4:13-26 (West 1973); *Oregon*: Or. Rev. Stat. § 62.355(3) (1979); *Utah*: Utah Code Ann. § 3-1-9(II)(a) (1982), and *Virginia*: Va. Code § 13.1-320(b)(1) (1978).

policies cannot be limited to general guidelines. Chances are a law will describe precise limits on how principles must be incorporated into its formal documents and how far the organization may modify each principle's application. Deviation from basic principles becomes not only a matter of concern for those wishing to preserve true cooperative ideals, but also becomes a matter of concern to cooperative policymakers responsible for guiding an organization in strictly legal behavior and operating methods.

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